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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2015 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through April 3, 2015. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through April 3, 2015.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2015 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2015 supplement pamphlets and in the bound volumes of the Code.

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TITLE 46

PUBLIC UTILITIES AND PUBLIC TRANSPORTATION

Chap.

Law reviews. — For article, "The New Special Master Rule — Uniform Superior Court Rule 46: Life Jackets for the Courts in the Perfect Storm," see 15 (No. 4) Ga. St. B. J. 20 (2009).

CHAPTER 1

GENERAL PROVISIONS

Sec.

46-1-1. Definitions.

As used in this title, the term:

(1) "Certificate" means a certificate of public convenience and necessity issued pursuant to this title.

(2) "Commission" means the Public Service Commission.

(3) "Company" shall include a corporation, a firm, a partnership, an association, or an individual.

(4) "Electric utility" means any retail supplier of electricity whose rates are fixed by the commission.

(5) "Gas company" means any person certificated under Article 2 of Chapter 4 of this title to construct or operate any pipeline or distribution system, or any extension thereof, for the transportation, distribution, or sale of natural or manufactured gas.

(6) "Person" means any individual, partnership, trust, private or public corporation, municipality, county, political subdivision, public authority, cooperative, association, or public or private organization of any character.

(7) "Railroad corporation" or "railroad company" means all corporations, companies, or individuals owning or operating any railroad in this state. This title shall apply to all persons, firms, and companies, and to all associations of persons, whether incorporated or otherwise, that engage in business as common carriers upon any of the lines of railroad in this state, as well as to railroad corporations and railroad companies as defined in this Code section.

(8) "Rate," when used in this title with respect to an electric utility, means any rate, charge, classification, or service of an electric utility or any rule or regulation relating thereto.

(9) "Utility" means any person who is subject in any way to the lawful jurisdiction of the commission. (Orig. Code 1863, §§ 2038, 2039; Code 1868, §§ 2039, 2040; Code 1873, §§ 2065, 2066; Ga. L. 1878-79, p. 125, § 12; Code 1882, §§ 719l, 2065, 2066; Civil Code 1895, §§ 2199, 2263, 2264, 2267; Civil Code 1910, §§ 2642, 2711, 2712, 2715; Ga. L. 1931, Ex. Sess., p. 99, § 2; Ga. L. 1931, p. 199, §§ 2, 33; Ga. L. 1933, p. 198, § 1; Code 1933, §§ 18-101, 18-201, 68-502, 68-601, 93-101; Ga. L. 1939, p. 207, § 1; Ga. L. 1943, p. 179,

§ 1; Ga. L. 1960, p. 1129, § 1; Ga. L. 1962, p. 630, § 1; Ga. L. 1963, p. 30, § 1; Ga. L. 1963, p. 365, § 1; Ga. L. 1964, p. 298, § 1; Ga. L. 1970, p. 224, § 1; Ga. L. 1975, p. 1190, § 1; Ga. L. 1976, p. 197, § 1; Ga. L. 1979, p. 651, § 1; Ga. L. 1980, p. 479, § 1; Code 1933, § 93-102, enacted by Ga. L. 1981, p. 121, § 2; Ga. L. 1982, p. 3, § 46; Ga. L. 1982, p. 410, §§ 1, 2; Ga. L. 1982, p. 827, §§ 1, 2; Ga. L. 1983, p. 3, § 35; Ga. L. 1983, p. 735, § 1; Ga. L. 1984, p. 22, § 46; Ga. L. 1984, p. 1394, § 1; Ga. L. 1985, p. 1394, § 1; Ga. L. 1986, p. 1283, § 1; Ga. L. 1987, p. 1090, § 1; Ga. L. 1990, p. 709, §§ 1, 2; Ga. L. 1993, p. 579, § 1; Ga. L. 1994, p. 97, § 46; Ga. L. 1994, p. 661, § 1; Ga. L. 1994, p. 1238, § 1; Ga. L. 1995, p. 1302, § 14; Ga. L. 1996, p. 950, § 2; Ga. L. 1997, p. 798, § 1; Ga. L. 2000, p. 951, §§ 9-1, 9-2, 9-3; Ga. L. 2002, p. 415, § 46; Ga. L. 2002, p. 1378, § 8; Ga. L. 2005, p. 334, § 28-1/HB 501; Ga. L. 2007, p. 607, § 1/HB 317; Ga. L. 2007, p. 679, § 1/HB 389; Ga. L. 2009, p. 669, § 1/HB 440; Ga. L. 2011, p. 479, § 18/HB 112; Ga. L. 2012, p. 580, § 14/HB 865; Ga. L. 2012, p. 775, § 46/HB 942.)

The 2005 amendment, effective July 1, 2005, substituted "commission" for "commissioner of motor vehicle safety" in paragraph (7); deleted ", provided that they do not operate to or from fixed termini outside of such limits and to any dray or truck which operates within the corporate limits of a city and is subject to regulation by the governing authority of such city or by the commissioner of motor vehicle safety and which goes beyond the corporate limits only for the purpose of hauling chattels which have been seized under any court process" at the end of division (9)(C)(ii); in division (9)(C)(x), substituted "commissioner of public safety" for "commissioner of motor vehicle safety" three times and inserted "and the Environment" following "Senate Natural Resources" in the next-to-last sentence; deleted division (9)(C)(xii), which read: "Motor vehicles engaged in compensated intercorporate hauling whereby transportation of property is provided by a person who is a member of a corporate family for other members of such corporate family, provided:

"(I) The parent corporation notifies the commissioner of motor vehicle safety of its intent or the intent of one of the subsidiaries to provide the transportation;

"(II) The notice contains a list of participating subsidiaries and an affidavit that the parent corporation owns directly or indirectly a 100 percent interest in each of the subsidiaries;

"(III) A copy of the notice is carried in the cab of all vehicles conducting the transportation; and

"(IV) The transportation entity of the corporate family registers the compensated intercorporate hauling operation with the commissioner of motor vehicle safety, registers and identifies any of its vehicles, and becomes subject to the commissioner's liability insurance and motor common carrier and motor contract carrier and hazardous materials transportation rules. For the purpose of this division, the term 'corporate family' means a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or indirectly a 100 percent interest;" substituted "state revenue commissioner" for "commissioner of motor vehicle safety" four times in division (9)(C)(xiii) and paragraphs (11) and (18), and added "state revenue" preceding "commissioner's" in division (9)(C)(xiii).

The 2007 amendments. — The first 2007 amendment, effective July 1, 2007, in division (9)(C)(ii), in the second sentence, substituted "such vehicles" for "taxicabs and buses" in the middle and added a period at the end, and added the last two sentences. The second 2007 amendment, effective July 1, 2007, added

the last sentence in subparagraph (9)(B) and substituted the present provisions of division (9)(C)(xiii) for the former provisions which read: "Vehicles, except limousines, transporting not more than ten persons for hire, except that any operator of such a vehicle is required to register the exempt operation with the state revenue commissioner, register and identify any of its vehicles, and become subject to the state revenue commissioner's liability insurance and vehicle safety rules;".

The 2009 amendment, effective May 4, 2009, added paragraphs (5.1), (6.2), and (6.3); in paragraph (6), near the beginning, inserted "'compensation' or 'for'" and inserted "payment or other", and added "or for hire, provided that no exempt rideshare shall be deemed to involve any element of transportation for compensation or for hire" at the end; and, in paragraph (13), deleted "or" at the end of subparagraph (13)(C), substituted "; or" for a period at the end of subparagraph (13)(D), and added subparagraph (13)(E).

The 2011 amendment, effective July 1, 2011, substituted "Reserved" for the former provisions of paragraph (8), which read: "'Motor carrier of property' means a motor common or contract carrier engaged in transporting property, except household goods, in intrastate commerce in this state."; in subparagraph (9)(A), substituted "persons or household goods or engaged in the activity of nonconsensual towing pursuant to Code Section 44-1-13 for hire over any public highway in this state" for "persons or property for hire over any public highway in this state and not operated exclusively within the corporate limits of any city", and added the last sentence; in subparagraph (9)(B), substituted "household goods" for "property", and inserted "or engaged in the activity of nonconsensual towing pursuant to Code Section 44-1-13," in the first sentence; in division (9)(C)(ii), deleted "drays, trucks, buses, and other motor vehicles" following "Taxicabs" in the first sentence and deleted the period following the first sentence, deleted the second through fourth sentences, relating to the exception of regulation by the governing authorities and tow trucks engaged in consensual towing, respectively, and added "the provisions of this division notwithstanding, vehicles and the drivers thereof operating within the corporate limits of any city shall be subject to the safety regulations adopted by the commissioner of public safety pursuant to Code Section 40-1-8" at the end of the present first sentence; substituted "Reserved" for the former provisions of division (9)(C)(v), which read: "Granite trucks, where transportation from quarry to finishing plant involves not crossing more than two counties"; substituted "Reserved" for the former provisions of division (9)(C)(vi), relating to RFD carriers and star-route carriers; substituted "Reserved" for the former provisions of division (9)(C)(vii), relating to motor trucks of railway companies which perform pick-up and delivery; substituted "Reserved" for the former provisions of division (9)(C)(ix), relating to single source leasing; substituted "Reserved" for the former provisions of division (9)(C)(x), relating to motor vehicles engaged exclusively in the transportation of agricultural or dairy products; substituted "subparagraph" for "paragraph" at the end of division (9)(c)(xiii); substituted "Reserved" for the former provisions of paragraph (11), relating to the definition of "permit"; and substituted "Reserved" for the former provisions of paragraph (13), relating to the definition of "private carrier"; and substituted "commission" for "state revenue commissioner" at the end of paragraph (18).

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, rewrote this Code section. The second 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "renter's" for "rentor's" in subparagraph (5.1)(C). See the Editor's note regarding the effect of these amendments.

Editor's notes. — Ga. L. 2012, p. 775, § 54(e)/HB 942, not codified by the General Assembly, provides: "In the event of an irreconcilable conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2012 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the

extent of the conflict." Accordingly, the amendment to subparagraph (5.1)(C) of this Code section by Ga. L. 2012, p. 775, 878, § 46(1)/HB 942, was not given effect.

JUDICIAL DECISIONS

Analysis

General Consideration
Motor Contract Carriers

General Consideration

Exemption of timber haulers.

Insurer failed to meet its burden of showing that a company it insured was not a "motor common carrier" or a "motor contract carrier" under O.C.G.A. § 46-1-1(9)(C) when a tractor-trailer it owned was involved in an accident because, although it showed that the tractor-trailer was being used to haul timber products when the accident occurred, it did not show that the tractor-trailer was used exclusively for that purpose, and the trial court erred when it granted the insurer's motion for summary judgment on plaintiff's personal injury claims. Jarrard v. Clarendon Nat'l Ins. Co., 267 Ga. App. 594, 600 S.E.2d 689 (2004).

Exemption for hauling logs did not apply. — In a wrongful death case, a motor carrier's insurer was subject to direct suit under the direct action statute, former O.C.G.A. § 46-7-12(c) (see O.C.G.A. § 40-1-112). The exemption for motor vehicles used exclusively to carry dairy or agricultural products, O.C.G.A. § 46-1-1(9)(C)(x), did not apply because the insured had used a tractor to haul other products besides logs, although the insured had hauled logs exclusively in the weeks prior to the accident. Occidental Fire & Cas. Co. of N.C. v. Johnson, 302 Ga. App. 677, 691 S.E.2d 589 (2010).

Cited in Axcan Scandipharm v. Schwan's Home Serv., 299 Ga. App. 49, 681 S.E.2d 631 (2009); Southern LNG, Inc. v. MacGinnitie, 294 Ga. 657, 755 S.E.2d 683 (2014).

Motor Contract Carriers

Failure to obtain permit had no impact on status as motor carrier of property. — Motor carrier's noncompliance with the carrier's responsibility to obtain a permit had no impact on the carrier's status as a Georgia "motor carrier of property" under O.C.G.A. § 46-1-1(8) because while the failure to get a permit rendered the motor carrier in violation of the Act, that failure did not render the motor carrier any less a "motor carrier of property" under applicable law. Sapp v. Canal Ins. Co., 288 Ga. 681, 706 S.E.2d 644 (2011).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 20C Am. Jur. Pleading and Practice Forms, Public Utilities, § 3.

46-1-2. Measure of damages for wrongs and injuries by railroad companies generally; venue for actions against railroad companies and electric companies generally.

(a) As used in this Code section, the term "electric company" means all corporations engaged in the business of either generating or transmitting electricity for light, heat, power, or other commercial purposes.

(b) If any railroad company doing business in this state shall, in violation of any rule or regulation of the Public Service Commission,

inflict any wrong or injury on any person, such person shall have a right of action and recovery for such wrong or injury in the county where the wrong or injury occurred and the damages which may be recovered in such actions shall be the same as in actions between individuals, provided that, in cases of willful violation of law, such railroad companies shall be liable for exemplary damages. All such actions under this subsection must be brought within 12 months after the commission of the alleged wrong or injury.

(c) Any railroad, electric company, or gas company shall be sued by anyone whose person or property has been injured by such railroad, electric company, or gas company, or by its officers, agents, or employees, for the purpose of recovering damages for such injuries, in the county in which the cause of action originated; and causes of actions on all contracts shall be brought in the county in which the contract in question is made or is to be performed. If the cause of action arises in a county where the railroad, electric company, or gas company liable to suit has no agent, service may be perfected by the issuance of a second original, to be served upon the company in the county of its principal office and place of business, if in this state, and if not, on any agent of such company. In the alternative, if the company has no agent in the county where the cause of action arises, an action may be brought in the county of the residence of such company.

(d) Whenever any:

(1) Railroad or electric company incorporated under the laws of this state acquires by purchase, lease, or otherwise the ownership or control of the line of railroad of a competing railroad company in this state, in violation of Article III, Section VI, Paragraph V(c) of the Constitution of the State of Georgia;

(2) Railroad or electric company incorporated under the laws of this state acquires by purchase, lease, or otherwise the ownership or control of the generating plant or transmission line of a competing electric company in this state, in violation of Article III, Section VI, Paragraph V(c) of the Constitution of the State of Georgia; or

(3) Gas company incorporated under the laws of this state acquires by purchase, lease, or otherwise the ownership or control of the natural gas pipeline or distribution system of a competing gas company in this state, in violation of Article III, Section VI, Paragraph V(c) of the Constitution of the State of Georgia;

the venue of an action brought against the railroad, electric company, or gas company for the purpose of setting aside and having annulled such unlawful act of acquisition shall be in any county through which may run the line of railroad or in any county through which may run the transmission line of such electric company or in any county in which

may be located the generating plant of such electric company or in any county through which may run the natural gas pipeline or distribution system so unlawfully acquired.

(e) In any cause of action described in this Code section, any judgment rendered in any county other than one designated in this Code section shall be void.

(f) The venue provisions of this Code section shall apply to the following electric companies:

(1) An electric company owning a generating plant in one county and having its situs or principal office either in some other county of this state or beyond the limits of this state;

(2) An electric company operating a generating plant, whether under lease or otherwise, in one county and having its situs or principal office either in some other county of this state or beyond the limits of this state;

(3) An electric company owning a transmission line located in one county and having its situs or principal office in some other county of this state or beyond the limits of this state;

(4) An electric company operating, whether under lease or otherwise, a transmission line located in one county and having its situs or principal office in some other county of this state or beyond the limits of this state;

(5) An electric company owning a transmission line located in, or extending through, more than one county; and

(6) An electric company operating, whether under lease or otherwise, a transmission line located in or extending through more than one county.

(g) The venue provisions of this Code section shall apply to the following gas companies:

(1) A gas company owning a natural gas pipeline or distribution system located in one county and having its situs or principal office in some other county of this state or beyond the limits of this state; and

(2) A gas company owning a natural gas pipeline or distribution system located in, or extending through, more than one county. (Ga. L. 1855-56, p. 154, §§ 1, 2; Ga. L. 1859, p. 48, § 1; Code 1863, § 3317; Code 1868, § 3329; Ga. L. 1869, p. 14, § 1; Code 1873, § 3406; Ga. L. 1878-79, p. 125, § 10; Code 1882, §§ 719, 3406; Ga. L. 1892, p. 59, § 1; Civil Code 1895, §§ 2197, 2334; Ga. L. 1898, p. 50, § 1; Civil Code 1910, §§ 2640, 2798; Ga. L. 1912, p. 66, §§ 1-4; Code 1933, §§ 93-413, 94-1101; Ga. L. 1983, p. 3, § 62; Ga. L. 1984, p. 22, § 46;

Ga. L. 1985, p. 149, § 46; Ga. L. 1986, p. 37, § 1; Ga. L. 1992, p. 6, § 46; Ga. L. 2004, p. 631, § 46; Ga. L. 2013, p. 551, § 1/HB 194.)

The 2013 amendment, effective May 6, 2013, substituted "subsection" for "title" in the last sentence of subsection (b); in subsection (c), in the first sentence, substituted "railroad, electric company, or gas company" for "railroad or electric company", inserted ", or gas company," and inserted "causes of", and, in the second sentence, substituted "railroad, electric company, or gas company " for "railroad or electric company" ; substituted the present provisions of subsection (d) for the former provisions, which read: "Whenever any railroad or electric company incorporated under the laws of this state acquires by purchase, lease, or otherwise the ownership or control of the line of railroad of a competing railroad company in this state, in violation of Article III, Section VI, Paragraph V(c) of the Constitution of the State of Georgia, or whenever any railroad or electric company incorporated under the laws of this state acquires by purchase, lease, or otherwise the ownership or control of the generating plant or transmission line of a competing electric company in this state, in violation of Article III, Section VI, Paragraph V(c) of the Constitution of the State of Georgia, the venue of an action brought against the railroad or electric company for the purpose of setting aside and having annulled such unlawful act of acquisition shall be in any county through which may run the line of railroad or in any county through which may run the transmission line of such electric company or in which may be located the generating plant of such electric company so unlawfully acquired."; substituted the present provisions of the introductory paragraph of subsection (f) for the former provisions, which read: "The following electric companies shall be embraced within the provisions of this Code section:"; and added subsection (g). See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 551, § 2/HB 194, not codified by the General Assembly, provides that: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to causes of actions arising on or after such effective date." The Governor approved this Act on May 6, 2013.

46-1-5. Duties of Department of Human Services with regard to assistance to low or fixed income consumers of gas and electric service.

By March 2, 1982, the Department of Human Resources (now known as the Department of Human Services) shall develop a program to identify those low or fixed income consumers of gas and electric utility service who, in the department's opinion, should benefit from public assistance in paying their bills for gas and electric service. The department shall also establish an efficient and economical method for distributing to such consumers all public assistance funds which will be made available, whether by appropriations of state or federal funds, grants, or otherwise. All gas and electric utilities shall cooperate fully with the department in developing and implementing its program. Nothing in this Code section shall limit the commission's authority to order regulatory alternatives which assist low or fixed income ratepayers. (Ga. L. 1981, p. 121, § 8; Ga. L. 2009, p. 453, § 2-20/HB 228.)

The 2009 amendment, effective July 1, 2009, inserted "(now known as the Department of Human Services)" in the first sentence of this Code section.

CHAPTER 2

PUBLIC SERVICE COMMISSION

ARTICLE 1

ORGANIZATION AND MEMBERS

46-2-1. Election of Commissioners; terms of office.

(a) The Georgia Public Service Commission shall consist of five members to be elected as provided in this Code section. The members in

office on January 1, 2012, and any member appointed or elected to fill a vacancy in such membership prior to the expiration of a term of office shall continue to serve out their respective terms of office. As terms of office expire, new members elected to the commission shall be required to be residents of one of five Public Service Commission Districts as hereafter provided, but each member of the commission shall be elected state wide by the qualified voters of this state who are entitled to vote for members of the General Assembly. Except as otherwise provided in this Code section, the election shall be held under the same rules and regulations as apply to the election of Governor. The Commissioners, who shall give their entire time to the duties of their offices, shall be elected at the general election next preceding the expiration of the terms of office of the respective incumbents. Their terms of office shall be six years and shall expire on December 31.

(b) In order to be elected as a member of the commission from a Public Service Commission District, a person shall have resided in that district for at least 12 months prior to election thereto. A person elected as a member of the commission from a Public Service Commission District by the voters of Georgia shall continue to reside in that district during the person's term of office, or that office shall thereupon become vacant.

(c) For the purpose of electing the members of the Public Service Commission, this state shall be divided into five Public Service Commission Districts described as follows:

District 001
Appling County
Atkinson County
Bacon County
Baker County
Ben Hill County
Berrien County
Brantley County
Brooks County
Bryan County
Bulloch County
Calhoun County
Camden County
Candler County
Charlton County
Chatham County
Chattahoochee County
Clay County
Clinch County
Coffee County

Colquitt County
Cook County
Crisp County
Decatur County
Dodge County
Dooly County
Dougherty County
Early County
Echols County
Effingham County
Evans County
Glynn County
Grady County
Irwin County
Jeff Davis County
Lanier County
Lee County
Liberty County
Long County
Lowndes County
Macon County
Marion County
McIntosh County
Miller County
Mitchell County
Montgomery County
Muscogee County
Pierce County
Pulaski County
Quitman County
Randolph County
Schley County
Seminole County
Stewart County
Sumter County
Tattnall County
Telfair County
Terrell County
Thomas County
Tift County
Toombs County
Turner County
Ware County
Wayne County
Webster County
Wheeler County

Wilcox County
Worth County

District 002
Baldwin County
Barrow County
Bibb County
Bleckley County
Burke County
Clarke County
Emanuel County
Glascock County
Greene County
Gwinnett County
Hancock County
Houston County
Jackson County
Jasper County
Jefferson County
Jenkins County
Johnson County
Jones County
Laurens County
Morgan County
Newton County
Oconee County
Putnam County
Screven County
Treutlen County
Twiggs County
Walton County
Washington County
Wilkinson County

District 003
Clayton County
DeKalb County
Fulton County
Rockdale County

District 004
Banks County
Bartow County
Catoosa County
Chattooga County
Cherokee County
Columbia County

Dade County
Dawson County
Elbert County
Fannin County
Floyd County
Forsyth County
Franklin County
Gilmer County
Gordon County
Habersham County
Hall County
Hart County
Lincoln County
Lumpkin County
Madison County
McDuffie County
Murray County
Oglethorpe County
Pickens County
Rabun County
Richmond County
Stephens County
Taliaferro County
Towns County
Union County
Walker County
Warren County
White County
Whitfield County
Wilkes County

District 005
Butts County
Carroll County
Cobb County
Coweta County
Crawford County
Douglas County
Fayette County
Haralson County
Harris County
Heard County
Henry County
Lamar County
Meriwether County
Monroe County

Paulding County
Peach County
Pike County
Polk County
Spalding County
Talbot County
Taylor County
Troup County
Upson County

(d) The first members of the commission elected under this Code section shall be elected thereto on the Tuesday next following the first Monday in November, 2012, from Public Service Commission Districts 3 and 5, shall take office on the first day of January immediately following that election, and shall serve for terms of office of six years and until the election and qualification of their respective successors. Those members of the commission elected thereto on the Tuesday next following the first Monday in November, 2014, from Public Service Commission Districts 1 and 4 shall take office on the first day of January immediately following that election and shall serve for terms of office of six years and until the election and qualification of their respective successors. The member of the commission elected thereto on the Tuesday next following the first Monday in November, 2016, from Public Service Commission District 2 shall take office on the first day of January immediately following that election and shall serve for a term of office of six years and until the election and qualification of his or her respective successor. All future successors to members of the commission whose terms of office are to expire shall be elected at the state-wide general election immediately preceding the expiration of such terms, shall take office on the first day of January immediately following that election, and shall serve for terms of office of six years. (Ga. L. 1878-79, p. 125, § 1; Code 1882, § 719a; Civil Code 1895, § 2185; Ga. L. 1906, p. 100, §§ 1-3; Ga. L. 1907, p. 72, § 1; Civil Code 1910, §§ 2615, 2616; Ga. L. 1922, p. 143, § 1; Code 1933, § 93-201; Ga. L. 1998, p. 1530, §§ 1, 2; Ga. L. 2002, p. 359, §§ 1, 2; Ga. L. 2012, p. 642, § 1/SB 382.)

The 2012 amendment, effective May 1, 2012, in subsection (a), substituted "January 1, 2012" for "January 1, 2000"; in subsection (b), twice substituted "shall" for "must" in the first and second sentences and added a comma following "office" in the second sentence; in the introductory paragraph of subsection (c), substituted "this state " for "the state" and rewrote the descriptions of the Public Service Commission Districts 1 through 5; in subsection (d), substituted "November, 2012" for "November, 2000" in the first sentence, substituted "November, 2014" for "November, 2002" in the second sentence, and substituted "November, 2016" for "November, 2004" in the third sentence; and deleted former subsection (e), relating to definitions and conditions.

JUDICIAL DECISIONS

Residency requirement met. — In a case involving the residency requirements of O.C.G.A. §§ 21-2-217(a) and 46-2-1(b), the trial court properly granted a Commissioner's motion for summary judgment because the evidence established the Commissioner's residence in District Two at least 12 months prior to the Commissioner's election to the Public Service Commission; pursuant to O.C.G.A. § 19-2-3, the domicile of the Commissioner's spouse in another district was not presumed to be the Commissioner's domicile. Dozier v. Baker, 283 Ga. 543, 661 S.E.2d 543 (2008).

Although a candidate for membership in the commission from a Georgia Public Service Commission district owned property outside the district on which the candidate held a homestead exemption until a month before the Georgia Secretary of State filed a challenge under O.C.G.A. § 21-2-5, the candidate was a resident of the district for purposes of O.C.G.A. § 46-2-1(b). The candidate spent most of the candidate's time in the district, was registered to vote there, paid taxes there, and registered automobiles there. Handel v. Powell, 284 Ga. 550, 670 S.E.2d 62 (2008).

Candidate improperly deemed ineligible. — In ruling a candidate was not qualified to be elected as a member of the commission from a Georgia Public Service Commission district because the candidate did not meet O.C.G.A. § 46-2-1(b)'s residency requirements, the Georgia Secretary of State erred in considering only the homestead exemption rule, O.C.G.A. § 21-2-217(a)(14), and ignoring the other applicable portions of § 21-2-217(a) to determine the candidate's residency. Handel v. Powell, 284 Ga. 550, 670 S.E.2d 62 (2008).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 20C Am. Jur. Pleading and Practice Forms, Public Utilities, § 6.

46-2-5. Chairperson of commission; selection.

(a) There shall be a chairperson of the commission. The chairperson shall be selected by a simple majority of the members of the commission. The chairperson serving on December 31, 2012, shall serve for a term of office as chairperson until January 1, 2013, or until his or her term as a member of the commission shall expire, whichever is shorter. Each subsequent chairperson shall serve for a two-year term of office as chairperson or until his or her term as a member of the commission shall expire, whichever is shorter. Any four members of the commission may call for an election of a chairperson at any time prior to the end of the term of a chairperson; provided, however, that such elections shall not be held more than twice per calendar year, except in the case of a vacancy by the chairperson; and provided, further, that any chairperson so elected shall serve for a two-year term of office as chairperson or until his or her term as a member of the commission shall expire, whichever is shorter. No commissioner shall be elected or serve as chairperson for more than two consecutive terms.

(b) The chairperson shall give his or her entire time to the duties of the office. (Ga. L. 1907, p. 72, § 3; Civil Code 1910, § 2622; Ga. L. 1919,

p. 92, § 2; Ga. L. 1922, p. 143, § 7; Code 1933, § 93-206; Ga. L. 1947, p. 673, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 613, §§ 1-5; Ga. L. 1960, p. 57, §§ 1, 2; Ga. L. 1963, p. 651, § 1; Ga. L. 1967, p. 95, § 1; Ga. L. 1992, p. 2335, § 1; Ga. L. 2012, p. 1176, § 1/SB 483.)

The 2012 amendment, effective December 31, 2012, rewrote subsection (a); deleted former subsections (b) and (c); redesignated former subsection (d) as present subsection (b); and rewrote subsection (b).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, "serving on December 31, 2012," was substituted for "currently serving on the effective date of this Code section" in the second sentence of subsection (a).

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 46-2-5 is constitutional; the Georgia Public Service Commission does not have the authority to declare the statute unconstitutional; the Commission is not free to disregard the statute; the Commission may not select a chairman for a two-year term; and a chairman whose term commences on July 1, 2009, may serve beyond January 16, 2010, only if there are no other commissioners eligible to serve as chairman under O.C.G.A. § 46-2-5(b)(2). 2009 Op. Att'y Gen. No. 2009-4.

ARTICLE 2

JURISDICTION, POWERS, AND DUTIES GENERALLY

46-2-20. Jurisdiction of commission generally; powers and duties of commission generally.

(a) Except as otherwise provided by law, the commission shall have the general supervision of all common carriers, express companies, railroad or street railroad companies, dock or wharfage companies, terminal or terminal station companies, telephone companies, gas or electric light and power companies, and persons or private companies who operate rapid rail passenger service lines within this state; provided, however, that nothing in this subsection shall be deemed to extend the jurisdiction of the commission to include the operations of the Metropolitan Atlanta Rapid Transit Authority created in an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended.

(b) The commission may hear complaints; in addition, it is also authorized to perform the duties imposed upon it of its own initiative.

(c) The commission may, either by general rules or by special orders in particular cases, require all companies under its supervision to establish and maintain such public services and facilities as may be reasonable and just.

(d) The commission may require common carriers and persons or private companies who operate rapid rail passenger service lines to

publish their schedules in newspapers of towns through which their lines extend, in such manner as may be reasonable and as the public convenience demands.

(e) The commission shall have authority to examine the affairs of all companies under its supervision and to keep informed as to their general condition, their capitalization, their franchises, and the manner in which the lines owned, leased, or controlled by them are managed, conducted, and operated, not only with respect to the adequacy, security, and accommodation afforded by their service to the public and their employees but also with reference to their compliance with all laws, orders of the commission, and charter requirements.

(f) The commission shall have the power and authority, whenever it deems advisable, to prescribe, establish, and order a uniform system of accounts to be used by railroads and other companies over which it has jurisdiction, the same to be, as far as practicable, in conformity with the system of accounts prescribed by the Interstate Commerce Commission. The commission shall also have the power and authority to examine all books, contracts, records, papers, and documents of any person subject to its supervision and to compel the production thereof.

(g) The commission shall have the power, through any of its members, at its discretion, to make personal visits to the offices and places of business of the companies under its supervision for the purpose of examination. Any Commissioner making a personal visit pursuant to this subsection shall have full power and authority to examine the agents and employees of any such company, under oath or otherwise, in order to procure information deemed by the Commissioner necessary to the work of the commission or of value to the public.

(h) Nothing in this Code section shall be so construed as to repeal or abrogate any existing law or rule of the commission as to notice or hearings to be accorded to any person interested in the rates fixed by, or in the orders, rules, or regulations promulgated by, the commission before the same are issued. Neither shall anything in this Code section repeal the law of this state as to notice by publication of a change in rates.

(i) The commission shall have the power and authority to prescribe rules and regulations for the safe installation and safe operation of all natural gas transmission and distribution facilities within this state, including, without limitation, all natural gas transmission and distribution facilities which are owned and operated by municipalities within this state.

(j) Notwithstanding any other provision of law, the authority and jurisdiction of the commission shall not extend to persons or companies who are engaged in the retail sale of natural gas to the public for use as

a fuel in motor vehicles and who are not otherwise subject to the authority and jurisdiction of the commission. (Ga. L. 1907, p. 72, § 6; Civil Code 1910, § 2663; Ga. L. 1922, p. 143, §§ 3, 5; Code 1933, § 93-307; Ga. L. 1967, p. 650, § 1; Ga. L. 1989, p. 692, § 1; Ga. L. 1990, p. 856, § 2; Ga. L. 1992, p. 1647, § 1; Ga. L. 2012, p. 847, § 3/HB 1115.)

The 2012 amendment, effective July 1, 2012, deleted "and telegraph" following "telephone" near the middle of subsection (a).

Law reviews. — For article, "The Chevron Two-Step in Georgia's Administrative Law," see 46 Ga. L. Rev. 871 (2012).

JUDICIAL DECISIONS

Analysis

General Consideration

Cited in City of LaGrange v. Ga. PSC, 296 Ga. App. 615, 675 S.E.2d 525 (2009).

Powers of Commission

Power to regulate construction belongs to Commission.

While the Georgia Public Service Commission (PSC) had the authority to regulate the placement of electrical substations, no requirement existed that every complex construction project be subject to zoning-like restrictions as an agency was not required to exercise the agency's zoning power under O.C.G.A. § 36-66-2(a); the broad statutory delegations of authority to the PSC did not specifically mention siting and did not provide sufficient objective standards to control the PSC's discretion so a trial court improperly directed the PSC to consider the propriety of a power company's construction of a substation and apply specific standards to the case. Ga. PSC v. Turnage, 284 Ga. 610, 669 S.E.2d 138 (2008).

Rate-making

Court lacked jurisdiction to hear utility company's appeal from an interim order. — Trial court erred by affirming a decision of the Georgia Public Service Commission (PSC) in a ratemaking appeal filed by a gas distribution company and by denying the PSC's motion to dismiss the company's appeal; the trial court lacked jurisdiction to hear the company's petition for judicial review since one order appealed from was an interim order, and not a final order, and a voice note appealed from was not even a decision subject to review. Atmos Energy Corp. v. Ga. PSC, 290 Ga. App. 243, 659 S.E.2d 385 (2008).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 9 Am. Jur. Pleading and Practice Forms, Electricity, Gas, and Steam, § 1.

46-2-22. Jurisdiction of commission over express companies and telegraph companies.

Reserved. Repealed by Ga. L. 2012, p. 847, § 4/HB 1115, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1890-91, p. 151, § 1; Civil Code 1895, § 2217; Civil Code 1910, § 2660; Ga. L. 1922, p. 143, § 1; Code 1933, § 93-305.

46-2-23. Rate-making power of commission generally; special provisions concerning telecommunications companies.

(a) The commission shall have exclusive power to determine what are just and reasonable rates and charges to be made by any person, firm, or corporation subject to its jurisdiction.

(b) As to those telecommunications companies subject to the jurisdiction of the commission, the commission is not required to fix and determine specific rates, tariffs, or charges for the services offered by said telecommunications companies and in lieu thereof may on application of an interested party or on its own motion after public notice and hearing:

(1) Totally deregulate a service;

(2) Totally eliminate any tariffs on a service;

(3) Eliminate tariff rates for a service but retain tariffs for service standards and requirements; or

(4) Eliminate tariff rates for a service but require that notice of any rate changes be provided to the commission.

(c) In determining what actions, if any, are to be taken on applications under subsection (b) of this Code section, the commission shall conduct hearings at which it shall consider the following factors:

(1) The extent to which competing telecommunications services are available from competitive providers in the relevant geographic market;

(2) The ability of competitive providers to make functionally equivalent or substitute services readily available;

(3) The number and size of competitive providers of service;

(4) The overall impact of the proposed regulatory change on the continued availability of existing services at just and reasonable rates;

(5) The impact of the proposed regulatory change upon efforts to promote universal availability of basic telecommunications services at affordable rates and to permit telecommunications companies subject to the jurisdiction of the commission to respond to competitive thrusts; and

(6) Such other factors as the commission may determine are in the public interest.

(d) Nothing in this Code section shall authorize the application of subsection (b) of this Code section to any service unless functionally equivalent or substitute services are readily available from competitive providers in the relevant geographic market. This finding must be made on the record after public hearing.

(e) Any telecommunications service deregulated or detariffed under this Code section may be reregulated or resubjected to tariffing by the commission if the commission finds, through a proceeding initiated on its own or upon application by an interested party, that such reregulation or retariffing is in the public interest.

(f) Nothing in this Code section shall be interpreted as requiring the commission to alter, amend, or repeal any rule or regulation which relates to any telecommunications company and which has been adopted by the commission or which is under consideration for adoption by the commission as of April 14, 1988.

(g) No telecommunications company may use current revenues earned or expenses incurred in conjunction with services subject to regulation to subsidize services which are not regulated or tariffed. The commission may adopt procedural rules as necessary to implement this subsection. (Code 1981, § 46-2-23, enacted by Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1988, p. 1988, § 1; Ga. L. 1990, p. 8, § 46; Ga. L. 1992, p. 6, § 46; Ga. L. 2002, p. 415, § 46; Ga. L. 2009, p. 303, §§ 12, 15/HB 117; Ga. L. 2012, p. 847, § 5/HB 1115.)

The 2009 amendment, effective April 30, 2009, in subsection (h), substituted "House Energy, Utilities and Telecommunications Committee" for "Industry Committee of the House of Representatives" and substituted "Senate Regulated Industries and Utilities Committee" for "Finance and Public Utilities Committee of the Senate". See editor's note for intent.

The 2012 amendment, effective July 1, 2012, deleted former subsection (h), which read: "Beginning one year after deregulation or eliminating tariffs on a service, the utility will file within 60 days of such anniversary date with the commission a report showing the rates or tariffs for such service on the effective date of deregulation or detariffing and the rates or tariffs on the anniversary date. Such reports will continue to be filed on an updated basis annually for a period of five years. The commission may prescribe the form and content of such reports. The commission will thereafter as soon as practicable file a summary of the results and contents of such reports with the House Energy, Utilities and Telecommunications Committee and the Senate Regulated Industries and Utilities Committee."

Editor's notes. — Ga. L. 2009, p. 303, § 20, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

Law reviews. — For annual survey on administrative law, see 61 Mercer L. Rev. 1 (2009).

JUDICIAL DECISIONS

Agency decision supported by facts.

As O.C.G.A. § 46-2-23(a) authorized the Georgia Public Service Commission to determine "just and reasonable" rates for electric service, and the evidence formed a sufficient basis for the Commission's decision to reallocate franchise fees paid to municipalities in exchange for access to municipal roads and rights-of-way so as to reduce the burden on non-municipal customers, the Commission's decision was not arbitrary, capricious, or unreasonable. Unified Gov't v. Ga. PSC, 293 Ga. App. 786, 668 S.E.2d 296 (2008).

Municipalities had standing to appeal agency's ruling. — As a municipal association intervened in rate-making proceedings before the Georgia Public Service Commission (PSC), and certain municipalities joined the association's arguments in the trial court, the municipalities had standing to appeal the PSC's decision concerning a reallocation of franchise fees paid to the cities, even though the municipalities did not apply to intervene before the PSC under O.C.G.A. § 46-2-59. Unified Gov't v. Ga. PSC, 293 Ga. App. 786, 668 S.E.2d 296 (2008).

46-2-23.1. "Alternative form of regulation" defined; filing; notice; approval; release of interstate pipeline capacity.

(a) As used in this Code section, the term "alternative form of regulation" means a method of establishing just and reasonable rates and charges for a gas company by performance based regulation without regard to methods based strictly upon cost of service, rate base, and rate of return. Performance based regulation may include without limitation one or more of the following features: earnings sharing, price caps, price-indexing formulas, ranges of authorized rates of return, and the reduction or suspension of regulatory requirements.

(b) A gas company may from time to time file an application with the commission to have its rates, charges, classifications, and services regulated under an alternative form of regulation. Within ten days of the filing, the gas company shall publish a notice generally describing the application in a newspaper or newspapers with general circulation in its service territory.

(c) After notice and hearing the commission may approve the plan, or approve it with modifications, if the commission determines that the application is in the public interest and will produce just and reasonable rates, after taking into consideration the extent to which the application:

(1) Is designed to and is likely to produce lower prices for consumers of natural gas in Georgia;

(2) Will provide incentives for the gas company to lower its costs and rates;

(3) Will provide incentives to improve the efficiency and productivity of the gas company;

(4) Will foster the long-term provision of natural gas service in a manner that will improve the quality and choices of service;

(5) Is consistent with maintenance and enhancement of safe, adequate, and reliable service and will maintain or improve preexisting service quality and consumer protection safeguards;

(6) Will not result in cross-subsidization among or between groups of gas company customers;

(7) Will not result in cross-subsidization among or between the portion of the gas company's business or operations subject to the alternative form of regulation and any unregulated portion of the business or operations of the gas company or of any of its affiliates;

(8) Will reduce regulatory delay and cost; and

(9) Will tend to enhance economic activity in the affected service territory.

(d) Performance based regulation adopted by the commission as an alternative form of regulation shall provide for the following:

(1) Equal and symmetric opportunities to earn above and below the performance standard;

(2) Performance incentives based upon conditions within the control of the management of the gas company; and

(3) Adjustments from time to time for the net effect of changes in tax rates, other costs imposed by law, and the cost of capital.

(e) Where an application for an alternative form of regulation has been filed by a gas company and the commission determines that the proposal does not satisfy the requirements of this Code section, it may either reject the proposal or issue an order approving an alternative with such modifications as the commission deems necessary to satisfy the requirements of this Code section. The commission shall determine and prescribe in any such order establishing rates and charges the revenue requirements of the gas company filing the application.

(f) An order adopting an alternative form of regulation may include:

(1) Terms and conditions for establishing new services, withdrawing services, price changes to services, and services by contract to individual customers;

(2) Terms and conditions necessary to achieve the objectives contained in subsection (c) of this Code section;

(3) General or specific authorization for changes in rates, charges, classifications, or services such that the provisions of subsection (a) of

Code Section 46-2-25 do not require 30 days' notice and commission approval before such change or changes may go into effect; and

(4) Other rates, terms, and conditions that are consistent with the objectives and requirements of subsection (c) of this Code section.

(g) Except as otherwise provided in this Code section, the provisions of this title relating to the rates, charges, and terms of service of a gas company shall apply to rates, charges, and terms of service established pursuant to this Code section.

(h) Any special or negotiated contract between a gas company and a retail customer approved by the commission shall not be invalidated or modified by the provisions of this Code section.

(i)(1) Neither the provisions of this Code section nor the provisions of Article 5 of Chapter 4 of this title shall prohibit a gas company from releasing interstate pipeline capacity available to it from time to time and not required to serve the requirements of its retail customers and marketers and from making sales of gas with or without interstate transportation capacity to municipal corporations, other local gas distribution companies, or marketers and end users connected to an interstate pipeline company or connected to another local distribution company; provided, however, that where net benefits to the firm retail customers who are receiving commodity sales service from the gas company accrue:

(A) Twenty percent of the revenues from the release of interstate pipeline capacity for the purposes of transporting gas to end users in Georgia shall be allocated to the gas company, and the remaining 80 percent of such revenues shall be credited to the costs of gas sold by the gas company to firm retail customers;

(B) Ten percent of the revenues from the release of interstate pipeline capacity for the purpose of transporting gas to end users outside of Georgia shall be allocated to the gas company, and the remaining 90 percent of such revenues shall be credited to the costs of gas sold by the gas company to firm retail customers; and

(C) Fifty percent of the net margin from the sale of gas, with or without interstate capacity, to municipal corporations, other local gas distribution companies, or marketers and end users connected to an interstate pipeline company or connected to another local distribution company shall be allocated to the gas company, and the remaining 50 percent of such net margins shall be credited to the costs of gas sold by the gas company to firm retail customers; provided, however, that if as a result of such sale, the then existing natural gas requirements of retail customers in Georgia cannot be supplied physically, all of such net margin shall be credited to the

costs of gas. The net margin shall be calculated by subtracting all variable costs associated with the transaction from the revenues generated by the transaction. The costs recovered by the gas company through such transactions shall be credited to the gas costs payable by retail customers of the gas company.

(2) Where a universal service fund has been created by the commission pursuant to Code Section 46-4-161 for a gas company which is an electing distribution company, as defined in paragraph (10) of Code Section 46-4-152, the shares that are to be credited to the costs of gas sold to firm retail customers under subparagraphs (A), (B), and (C) of paragraph (1) of this subsection shall be allocated to such fund, and the costs recovered through a transaction described in subparagraph (C) of this subsection shall be allocated to such company.

(3) Any gas company which engages in a transaction of a type described in paragraph (1) of this subsection, which results in the allocation to the gas company of a share of the revenues or net margin therefrom, shall make a report to the commission annually describing each such transaction and explaining the benefits resulting to firm retail customers from each such transaction. (Code 1981, § 46-2-23.1, enacted by Ga. L. 1997, p. 798, § 2; Ga. L. 2015, p. 1088, § 35/SB 148.)

The 2015 amendment, effective July 1, 2015, deleted the former last sentence of paragraph (i)(3), which read: "Such report shall be served on the consumer's utility counsel division of the Governor's Office of Consumer Affairs."

46-2-25. Procedure for changing any rate, charge, classification, or service; recovery of financing costs.

(a) No person, firm, or corporation (referred to in this Code section as a "utility") subject to the jurisdiction of the commission shall make any change in any rate, charge, classification, or service subject to the jurisdiction of the commission, or in any rule or regulation relating thereto, except after 30 days' notice to the commission and to the public, unless the commission otherwise orders, or unless the commission has previously authorized or approved the change. Such notice shall be given by filing with the commission and keeping open for public inspection new schedules stating plainly the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission, for good cause shown, may allow changes to take effect without requiring the 30 days' notice by an order specifying the changes to be made, the time when they shall take effect, and the manner in which they shall be filed and published.

(b) Whenever any new schedule is filed pursuant to subsection (a) of this Code section, the commission shall have authority, either upon

written complaint or upon its own initiative without complaint, at once, and, if it so orders, without answer or formal pleading by the utility but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service. Pending such hearing and the decision thereon, the commission, upon filing with such schedule and delivering to the utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a period longer than five months beyond the time when it would otherwise go into effect, provided that the commission may apply to the Superior Court of Fulton County for an extension of such period, as provided for in Code Section 46-2-57. After such hearings as are required, whether they are completed before or after the rate, charge, classification, or service goes into effect, the commission may make such orders as are proper with reference thereto within the authority vested in the commission. The commission is empowered to reduce or revoke any such suspension with respect to all or any part of such schedule. If the proceeding has not been concluded and an order not made at the expiration of the suspension period, the proposed change of rate, charge, classification, or service shall go into effect at the end of such period; but in case of a proposed increased rate or charge, the commission shall by order require the interested utility to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid; and upon completion of the hearing and the rendering of a decision, the commission shall by further order require such utility to refund, with interest at the maximum legal rate, in such manner as the commission may direct, such portion of such increased rates or charges as by its decision shall be found not justified. Any portion of such refunds not thus refunded to patrons or customers of the utility shall be refunded or disposed of by the utility as the commission may direct, provided that no such funds shall accrue to the benefit of the utility. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility, and the commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

(c) Before any increased rate or charge shall go into effect without the approval of the commission, the commission shall by order require the interested utility to file with the commission a bond written by a surety who is approved by the commission and who is authorized to transact business in this state. The bond shall be fixed by the commission in an amount not to exceed $250,000.00. The bond shall be payable to the Governor and conditioned upon the faithful performance of the requirements of the refund order entered by the commission, the

requirements of this Code section, and the requirements of the rules and regulations of the commission.

(c.1)(1) Notwithstanding any provision to the contrary, a utility shall recover from its customers, as provided in this subsection, the costs of financing associated with the construction of a nuclear generating plant which has been certified by the commission. The financing charges shall accrue on all applicable certified costs as they are recorded in the utility's construction work in progress accounts pursuant to generally accepted accounting and regulatory principles as approved by the commission. The financing costs shall be based on the utility's actual cost of debt, as reflected in its annual surveillance report filed with the commission, and based on the authorized cost of equity capital and capital structure as determined by the commission when setting the utility's current base rates. These financing costs shall be recovered from each customer through a separate rate tariff and allocated on an equal percentage basis to standard base tariffs which are designed to collect embedded capacity costs. The commission shall retain the discretion to consider the effect of this tariff when setting the level of any senior or low income assistance it may authorize; provided, however, that the income qualification for such assistance shall be 200 percent of the federal poverty level.

(2) The commission shall have the authority to authorize any specific accounting treatment for the costs recovered pursuant to this subsection and to review whether costs recovered pursuant to this subsection are being properly recorded.

(3)(A) For any nuclear generating plant certified by the commission on or after July 1, 2009, the utility may begin recovering the costs of financing the construction of the nuclear generating plant at any time within five years after the date on which such nuclear generating plant is certified. Any such costs incurred between the time the plant is certified and the time the utility begins recovering its cost shall be accrued, capitalized, and included in the balance of the account and then amortized over the next five years following the date on which the utility begins recovering the costs of financing the construction and shall be recovered with one-fifth of those deferred costs being recovered each year for five years.

(B) For any nuclear generating plant certified by the commission on or after January 1, 2009, and before July 1, 2009, the utility shall begin recovering on January 1, 2011, any costs of financing the construction of the nuclear generating plant. Any such costs incurred prior to January 1, 2011, shall be accrued, capitalized, and included in the balance of the account and then amortized over the next five years following January 1, 2011, and shall be recovered with one-fifth of those deferred costs being recovered each year for five years.

(4) The costs recoverable pursuant to this subsection shall be recalculated and the level of the charges reset annually if necessary to reflect the level of construction costs expected to be incurred in the next 12 months consistent with the certificate and the financing costs expected to be incurred for the next 12 months together with a balanced accounting of actual expenditures and financing costs incurred in the preceding period.

(5) The financing costs associated with a nuclear generating plant which has been certified by the commission shall continue to be recovered between the time that the generating plant begins commercial operation and until the next general rate case filed by the utility becomes effective, at which time the financing costs being collected for any generating plants which are then in commercial operation shall be included in the general revenue requirements of the utility and collected in the general base rates of the utility.

(d) Any action taken by the commission under this Code section shall be reduced to writing by the commission and signed by the chairman and secretary thereof. All such actions and orders shall be effective from the date such actions are reduced to writing and are signed as provided by this subsection. No such action or order of the commission may be given retroactive effect. A full and complete record shall be kept of the votes taken in connection with any such action, said record to be entered upon the official minutes of the commission.

(e) Nothing in this Code section shall be construed as limiting the authority granted to the commission by Code Sections 46-2-20 and 46-2-23 to initiate an earnings review hearing. (Code 1933, § 93-307.1, enacted by Ga. L. 1972, p. 137, § 1; Ga. L. 1976, p. 419, § 1; Ga. L. 2002, p. 475, § 2; Ga. L. 2009, p. 39, § 2/SB 31.)

The 2009 amendment, effective April 21, 2009, added subsection (c.1).

Editor's notes. — Ga. L. 2009, p. 39, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Nuclear Energy Financing Act.'"

JUDICIAL DECISIONS

Construction with other statutes. — O.C.G.A. § 46-2-25 supercedes contrary provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-17, with regard to the judicial review of decisions made by the Georgia Public Service Commission. Atmos Energy Corp. v. Ga. PSC, 290 Ga. App. 243, 659 S.E.2d 385 (2008).

Court lacked jurisdiction to hear utility company's ratemaking appeal from an interim order. — Trial court erred by affirming a decision of the Georgia Public Service Commission (PSC) in a ratemaking appeal filed by a gas distribution company and by denying the PSC's motion to dismiss the company's appeal; the trial court lacked jurisdiction to hear

the company's petition for judicial review since one order appealed from was an interim order, and not a final order, and a voice note appealed from was not even a decision subject to review. Atmos Energy Corp. v. Ga. PSC, 290 Ga. App. 243, 659 S.E.2d 385 (2008).

Natural gas distribution company could not challenge a rate change ruling by the Georgia Public Service Commission (PSC) because the order was not a final order under O.C.G.A. § 46-2-25(d) as the language indicated that it was only an interim decision; § 46-2-25 did not mandate the entry of a final order at the end of the six-month "file and suspend" period, and O.C.G.A. § 50-13-17(b) of the Administrative Procedure Act did not prevail over the more restrictive requirements imposed by § 46-2-25(d) as to the manner in which the PSC rendered a decision. Atmos Energy Corp. v. Ga. PSC, 285 Ga. 133, 674 S.E.2d 312 (2009).

Constitutional challenges to statute could not be considered on appeal. — Taxpayers constitutional challenges to the Georgia Nuclear Energy Financing Act, O.C.G.A. § 46-2-25(c.1), could not be considered on appeal because the trial court declined to reach the merits of the constitutional challenges and merely ruled that the taxpayers lacked standing to raise the claims; because the taxpayers neither enumerated as error the ruling of the trial court that the taxpayers lacked standing to raise a constitutional challenge to § 46-2-25(c.1) nor provided any argument or citation of authority with respect to that ruling, it was not made an issue in the appeal and would not be considered. Fulton County Taxpayers Found., Inc. v. Ga. PSC, 287 Ga. 876, 700 S.E.2d 554 (2010).

46-2-25.2. Sixteen-mile toll-free telephone calling; modification of rate schedules; recovery of expenses or lost revenues by telephone companies; rate-making power of Public Service Commission not affected.

Editor's notes. — Code Section 50-5-200, referred to in this Code section, was repealed by Ga. L. 2008, p. 1015, § 10.

46-2-26.3. Recovery of costs of conversion from oil-burning to coal-burning generating facility; filing of request; public hearing; determination of rate; adjustments.

(a) A utility regulated by the Public Service Commission which has 25 percent or more of its total generating capacity as oil-fired generation and operates any electric generating facility which was in the process of being converted on January 1, 1982, and which will be converted and in commercial operation as a coal-fired facility on or before December 31, 1982, after conversion from oil to coal-fired operation may file with the commission an application to determine the appropriate rate to recover the cost of conversion and to demonstrate the fuel cost savings resulting from said conversion.

(b) For the purposes of this Code section, the following words or terms shall have the following meanings:

(1) "Coal" shall mean coal used as a primary energy source.

(2) "Commission" shall mean the Georgia Public Service Commission.

(3)(A) "Cost of conversion" shall mean costs as determined by the commission to be reasonable and necessary for the conversion of an oil-burning electric generating facility to the burning of coal. Such costs shall include, but not be limited to, engineering, administrative, and legal costs, the cost of environmental studies and control equipment, coal-handling and storage equipment, including rail facilities, equipment and facilities necessary to permit the combustion of coal, the cost of retrofitting or refurbishing boilers to permit the combustion of coal, the cost of on-site and off-site facilities for handling, storing, and disposing of wastes resulting from the combustion of coal, and the cost of all other facilities reasonable and necessary to allow the conversion of an oil-burning electric generating facility to burn coal. Such costs shall also include the reasonable cost of capital for such conversion and for carrying the cost of such conversion until such costs are recovered as provided in this Code section. In no case shall cost of conversion include any costs incurred pursuant to an expansion of an electric generating facility's generating capacity above the generating capacity of said facility that existed prior to the conversion from oil to coal.

(B) "Cost of conversion" shall not include the amount financed by the company through tax-exempt pollution control bonds, if any, of any portion of the project certified by the Environmental Protection Division of the Department of Natural Resources, or other agency vested with similar authority, to be a pollution control facility and therefore eligible for financing under Section 103 of the Internal Revenue Code and the regulations thereunder or other similar law or regulation now or hereafter adopted.

(4) "Fuel cost savings" shall mean the amount of fuel savings to be obtained by operating the facility converted from oil to coal-fired operation during the facility's first full 12 months of operation using coal as its primary fuel as compared to the operation of such facility on oil, had it been so operated, during the same 12 month period.

(5) "Utility" shall mean any retail supplier of electricity subject to the rate-making jurisdiction of the commission.

(c) Any utility meeting the qualifications under subsection (a) of this Code section may file with the commission a request to establish an appropriate adjustment in its rates and charges in order to recover the costs of conversion of an oil-burning generating facility to coal-fired operation as provided herein. After receipt of such filing, the commission shall hold a public hearing to determine the cost of conversion of the generating facility and the fuel cost savings anticipated. Unless it is determined by the commission that the cost of conversion will be less than the projected fuel cost savings accruing to retail customers over the remaining life of the generating facility, no further action shall be

taken by the commission. Upon making such determination that the fuel cost savings exceed the cost of conversion, the commission shall then determine the appropriate rate to recover the cost of conversion as provided in subsection (d) of this Code section.

(d) In determining the appropriate rate, the commission shall consider the cost of conversion, and an appropriate period of time, but not more than seven years, to amortize such cost. The appropriate rate shall be an amount which is not less than the amount necessary to amortize the cost of conversion, as herein defined over a period of not more than seven years on a per kilowatt-hour basis taking into consideration the estimated kilowatt hours to be generated for sale by the utility during the first full 12 months in operation of the facility. In determining the rate to recover the cost of conversion, the commission shall permit recovery by the utility of the cost of conversion net of such federal, state, or local taxes based on revenue and income which may be imposed upon the utility for receipt of proceeds of the fuel-savings-allocation which cannot be reasonably avoided by the utility using due diligence. All revenues derived through the rate herein provided shall be applied solely to the cost of conversion of said facility.

(e) The utility shall compute, record, and report to the commission monthly the amount collected under any rate herein authorized and the amount applied to the cost of conversion and the balance remaining to be recovered.

(f) Upon recovery by the utility of the cost of conversion as herein provided, the utility shall no longer charge any rate authorized to recover the cost of conversion. Upon such termination, the utility shall file a report with the commission within 30 days, sworn to by an officer of the utility, that its fuel-savings-allocation revenues are in compliance with all commission orders issued pursuant to this Code section. In the event such revenue is lesser or greater than the utility's cost of conversion, the commission shall make such determinations and issue such orders as are necessary to result in the full recovery, but no more, of the cost of conversion.

(g) In the event the utility should become entitled, by reason of the conversion, to any federal or state grant and receive same, the commission shall make such determinations and issue such orders as are necessary to reduce the amount of conversion costs which the utility would otherwise recover by means of the rate provided herein. If such grant is received after termination of such adjustment, the utility shall promptly report such receipt and the commission shall make such determinations and issue such orders as are necessary to result in the utility receiving no more than the cost of conversion after taking into account such grant.

(h) Once the utility charges the rate to recover the cost of conversion, the commission shall not recognize for rate-making purposes any costs

of conversion which are recovered by the utility through the rate provided herein.

(i) At any hearing or any proceeding under this Code section formal intervention by customers of the utility shall be permitted. All commission orders issued pursuant to this Code section shall be rendered within 180 days from the date of any filing or the institution of any proceeding hereunder and shall contain, unless waived by all parties, the commission's findings of fact and conclusions of law upon which the commission's action is based. Such order shall be deemed a final order subject to judicial review under Chapter 13 of Title 50, known as the "Georgia Administrative Procedure Act."

(j) Any recovery of costs of conversion provided or allowed hereunder shall not affect the recovery of fuel costs provided in Code Section 46-2-26. (Code 1933, § 93-307.5, enacted by Ga. L. 1982, p. 412, § 1; Code 1981, § 46-2-26.3, enacted by Ga. L. 1982, p. 412, § 2; Ga. L. 1983, p. 3, § 35; Ga. L. 1984, p. 22, § 46; Ga. L. 1987, p. 191, § 9; Ga. L. 1989, p. 14, § 46; Ga. L. 1992, p. 6, § 46; Ga. L. 2014, p. 866, § 46/SB 340; Ga. L. 2015, p. 1088, § 36/SB 148.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, deleted the extra subsection (b) designation preceding subparagraph (3)(A).

The 2015 amendment, effective July 1, 2015, in subsection (f), deleted "and the consumers' utility counsel" following "file a report with the commission" near the beginning of the second sentence.

Editor's notes. — Ga. L. 2015, p. 1088, § 36/SB 148, effective July 1, 2015, purported to revise this Code section, but only amended subsection (f).

46-2-26.5. Gas supply plans and adjustment factors; filings and hearing procedures; recovery of purchase gas cost.

(a) As used in this Code section, the term:

(1) "Adjustment factor" means a factor used pursuant to a purchased gas adjustment rate to recover purchased gas costs.

(2) "Commission" means the Georgia Public Service Commission.

(3) "Firm customer" means a customer who purchases gas from a gas utility on a firm basis which ordinarily is not subject to interruption or curtailment.

(4) "Gas supply plan" means the particular array of available gas supply, storage, and transportation options selected by a gas utility to supply the requirements of its firm customers.

(5) "Gas utility" means a gas utility subject to the jurisdiction of the commission.

(6) "Purchased gas adjustment rate" means a purchased gas adjustment rider or similar rate, provision, or clause in the tariff of a

gas utility pursuant to which purchased gas costs are billed to the firm customers of the gas utility.

(7) "Purchased gas costs" means all costs incurred by a gas utility for the purpose of acquiring gas delivered to its system in order to supply its firm customers, including without limitation the costs incurred in purchasing gas from sellers; the costs incurred in transactions involving rights to buy and sell gas; the costs incurred in gathering gas for transportation to the gas utility; the costs incurred in transporting gas to the facilities of the gas utility; the costs incurred in acquiring and using gas storage service from others, including the costs of injecting and withdrawing gas from storage; and all charges, fees, and rates incurred in connection with such purchases, rights, gathering, storage, and transportation.

(8) "Recovery year" means the 12 calendar months commencing October 1, 1994, and ending September 30, 1995, and each succeeding 12 calendar month period thereafter.

(b) Commencing October 1, 1994, the requirements of this Code section shall apply to any purchased gas adjustment rate. The requirements of Code Section 46-2-25 shall not apply to filings made or proceedings conducted pursuant to this Code section.

(c) On or before August 1 of each year, each gas utility shall file with the commission its gas supply plan for the following recovery year. The gas utility shall include with such filing the adjustment factors it proposes for recovering its purchased gas costs during such following recovery year, together with the calculations that produced such factors.

(d) Not less than ten days after any such filing by a gas utility, the commission shall conduct a public hearing on such filing. The gas utility's testimony shall be under oath and shall, with any corrections thereto, constitute the gas utility's affirmative case. At any hearing conducted pursuant to this Code section, the burden of proof to show that the proposed gas supply plan and adjustment factors are appropriate shall be upon the gas utility.

(e) Following such a hearing, the commission shall issue an order approving the gas supply plan filed by the gas utility or adopting a gas supply plan for the gas utility that the commission deems appropriate. In addition, the commission in its order shall approve the adjustment factors proposed by the gas utility or adopt adjustment factors that the commission deems appropriate. The adjustment factors approved or adopted by the commission, or otherwise made effective under this Code section, shall be applied uniformly to all firm customers upon the effective date of such factors. The adjustment factors to be effective during the recovery year commencing October 1, 1994, shall be set at

levels appropriate to account for underrecoveries or overrecoveries, if any, under the purchased gas adjustment rate of the gas utility in effect prior to October 1, 1994. The adjustment factors to be applicable during each recovery year commencing October 1, 1995, and thereafter, shall be set at levels appropriate to account for underrecoveries or overrecoveries during the preceding recovery year. Should the commission fail or refuse to issue an order by the ninetieth day after the gas utility's filing which either approves the gas supply plan filed by the gas utility or adopts a different gas supply plan for the gas utility, the gas supply plan proposed by the gas utility shall thereupon be deemed approved by operation of law. Similarly, should the commission fail or refuse to issue an order by such date which either approves the adjustment factors proposed by the gas utility or adopts different adjustment factors for the gas utility, the adjustment factors proposed by the gas utility shall thereupon be deemed approved by operation of law.

(f) The provisions of law relating to parties, intervention, and discovery in proceedings before the commission shall apply with respect to proceedings under this Code section.

(g) Each gas utility shall file with the commission monthly its actual monthly purchased gas costs and accumulated purchased gas costs during the recovery year. The gas utility shall include in such filing information which demonstrates whether such purchased gas costs were incurred in accordance with a gas supply plan which had become effective in accordance with the provisions of this Code section.

(h) Each gas utility shall also file with the commission monthly the most current data available showing the monthly and accumulated overrecoveries or underrecoveries of actual purchased gas costs resulting from application of its purchased gas adjustment rate.

(i) At least every three calendar months, the gas utility shall file proposed revisions to the adjustment factors based on actual unrecovered purchased gas costs in order that the revenues to be recovered pursuant to such rate during the remainder of the current recovery year shall equal, as nearly as possible, the gas utility's unrecovered purchased gas costs through the end of such recovery year. The revisions to the adjustment factors, if any, shall be made to the nearest 0.01¢ per therm. Unless the commission directs otherwise, such revised adjustment factors shall become effective on the first day of the first calendar month that begins at least 15 days after the date of such filing.

(j) All commission orders issued pursuant to this Code section shall contain the commission's findings of fact and conclusions of law upon which the commission's action is based. Any such order shall be deemed

a final order subject to judicial review under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(k) The commission shall not prohibit or limit the operation of a purchased gas adjustment rate of a gas utility to the extent that the adjustment permits increases or decreases to adjust for increased or decreased purchased gas costs when such increased or decreased purchased gas costs shall have become effective under the procedures of a federal regulatory agency or under a contract approved by a federal regulatory agency. Any subsequent refunds received by a gas utility with respect to any such increased purchased gas costs which become effective under procedures of a federal regulatory agency, or otherwise, shall be treated by the gas utility in such manner as the commission may direct.

(l) Any purchased gas costs which are incurred by a gas utility in accordance with a gas supply plan which was in effect pursuant to the provisions of this Code section at the time such costs were incurred may be recovered by the gas utility under its purchased gas adjustment rate and shall not be disallowed retroactively by the commission nor by any court which reviews the action of the commission in the absence of fraud or willful misconduct on the part of the gas utility; provided, however, that the commission may disallow and make appropriate adjustments for any purchased gas costs that were not incurred in accordance with such a gas supply plan if the same resulted in higher purchased gas costs and were the result of clearly imprudent conduct on the part of the gas utility. The provisions of this Code section shall not prohibit the commission from authorizing a gas utility to recover under a purchased gas adjustment rate costs or amounts in addition to purchased gas costs, nor shall the provisions of this Code section prohibit the commission from removing from purchased gas costs those costs incurred by a gas utility for the purpose of acquiring gas to supply customers who are not firm customers.

(m) After a gas supply plan has become effective under the provisions of this Code section as a result of a proceeding before the commission, the commission shall retain jurisdiction of the proceeding for the balance of the recovery year for the purposes set forth in this subsection. Upon the application of the affected gas utility or upon its own initiative, the commission may, after affording due notice and opportunity for hearing to the affected gas utility and the intervenors in the proceeding, amend the gas supply plan of the affected gas utility for the remainder of the recovery year. The amended gas supply plan shall become effective upon the date of the commission's order and shall not have retroactive effect. (Code 1981, § 46-2-26.5, enacted by Ga. L. 1994, p. 630, § 2; Ga. L. 2006, p. 709, § 1/SB 209.)

The 2006 amendment, effective July 1, 2006, substituted "ninetieth day" for "forty-fifth day" in the sixth sentence of subsection (e).

46-2-28. Procedure for issuance of stocks, bonds, notes, or other debt by companies under commission's jurisdiction; exemptions.

(a) Each of the companies over which the commission has jurisdiction shall be required to furnish the commission a list of any stocks and bonds the issuance of which is contemplated.

(b) It shall be unlawful for any of such companies to issue stocks, bonds, notes, or other evidences of debt, payable more than 12 months after the date of issuance, except upon the approval of the commission, and then only when necessary and for such amount as may be reasonably required for the acquisition of property; the construction and equipment of power plants and carsheds; the completion, extension, or improvement of its facilities or properties; the improvement or maintenance of its service; the discharge or lawful refunding of its obligations; or other lawful corporate purposes falling within the spirit of this Code section.

(c) The decision of the commission shall be final as to the validity of the issuance of stocks, bonds, notes, or other evidences of debt by companies under the jurisdiction of the commission.

(d) Before issuing stocks, bonds, notes, or other evidence of debt, a company under the jurisdiction of the commission shall secure an order from the commission authorizing such issue, the amount thereof, and the purpose and use for which the issue is authorized. For the purpose of enabling it to determine whether such order should be issued, the commission shall make such inquiry or investigation, hold such hearings, and examine such witnesses, books, papers, documents, or contracts as it may deem advisable or necessary.

(e) Notwithstanding any other provision of this Code section, a company under the jurisdiction of the commission may issue notes or other evidences of debt for proper and lawful corporate purposes, payable at periods of not more than 12 months from the date of issuance, without the consent of the commission, provided that no such notes or other evidences of debt shall, in whole or in part, directly or indirectly, be refunded by any issue of stocks, bonds, or other evidences of debt running for more than 12 months without the consent of the commission.

(f) Notwithstanding any other provision of this Code section, motor common carriers and motor contract carriers regulated under Chapter 7 of this title shall be exempt from the provisions of this Code section.

(g) Notwithstanding any other provision of this Code section or any other provision of law, local exchange companies as defined in paragraph (10) of Code Section 46-5-162 under the commission's jurisdiction shall be exempt from the provisions of this Code section if the stocks, bonds, notes, or other evidences of debt are issued as part of a debt transaction that is an interstate transaction, as evidenced by the following:

(1) The local exchange company is a wholly owned subsidiary of a parent company headquartered or domiciled outside of this state;

(2) The debt transaction is by and between the parent company, the primary obligor, and a national bank or other lending or financial institution licensed or authorized to enter into such debt transaction by any state or federal agency; and

(3) The local exchange company is issuing stocks, bonds, notes, or other evidences of debt for the purpose of providing collateral or other security to the lending or financial institution in order to accommodate the debt transaction of a parent company or other entity. (Ga. L. 1907, p. 72, § 8; Civil Code 1910, § 2665; Code 1933, § 93-414; Ga. L. 1986, p. 1518, § 1; Ga. L. 2011, p. 582, § 1/HB 116; Ga. L. 2012, p. 775, § 46/HB 942.)

The 2011 amendment, effective May 12, 2011, added subsection (g).

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in the introductory language of subsection (g).

46-2-33. Costs incurred by commission charged to utility; invoicing; recovery.

(a) The cost to the commission of providing reasonably necessary specialized testimony and assistance in conducting affiliate transactions audits prior to utility rate cases, in monitoring nuclear power costs, and in proceedings initiated by the utility, including, but not limited to, utility rate cases, fuel cost recovery cases, gas supply cases, and capacity supply cases, shall be charged to the affected utility. The amount of any such charges shall not exceed $200,000.00 per case per year, except for utility rate cases, generation construction monitoring, integrated resource planning cases, and generation certification cases, to the extent such amount is not also being recovered pursuant to an order issued under subsection (c) of Code Section 46-3A-5, which shall not exceed $600,000.00 per case per year. The maximum fee shall be adjusted on an annual basis based on the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. In the event the Consumer Price Index is no longer available, the commission shall select a comparable broad national measure of inflation. This Code section shall not apply to

proceedings for Tier 1 local exchange companies that have elected alternative regulation or to certificated competing local exchange carriers.

(b) At the time the commission determines that specialized testimony and assistance is required, the commission shall issue an order setting forth the scope and budget for such testimony and assistance. All invoices relating to the testimony and assistance shall be subject to commission review and approval, and no utility shall be required to pay any invoice not approved by the commission.

(c) The amounts paid by regulated companies under this Code section shall be deemed a necessary cost of providing service, and the utility shall be entitled to recover the full amount of any costs charged to the utility pursuant to this Code section. In addition, at the election of the utility, the utility shall be entitled to recover all such costs promptly through a reasonably designed rider designated for such purpose. (Code 1981, § 46-2-33, enacted by Ga. L. 2010, p. 111, § 1/HB 1233.)

Effective date. — This Code section became effective July 1, 2010.

ARTICLE 2A

UTILITY FINANCE SECTION

46-2-42. Employment of assistant director of Utility Finance Section; employment of accountants, statisticians, experts, and clerical personnel; application of rules and regulations.

(a) The director of the Utility Finance Section shall employ an assistant director who shall be employed at the pleasure of the commission and as provided by law.

(b) The director shall employ such accountants, statisticians, experts, and clerical personnel as are necessary for the effective performance of the duties of the section, and such employees shall be in the unclassified service as defined by Code Section 45-20-2.

(c) Rules and regulations of the State Personnel Board concerning compensation and promotion shall not apply to employees of the Utility Finance Section. (Code 1933, § 93-203a, enacted by Ga. L. 1981, p. 121, § 4; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-87/HB 642.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "state merit system" twice in subsection (c).

The 2012 amendment, effective July 1, 2012, added ", and such employees shall be in the unclassified service as defined by Code Section 45-20-2" at the end of sub-

section (b); and substituted the present provisions of subsection (c) for the former provisions, which read: "With the concurrence of the State Personnel Administration compensation board, certain employees of the section may be included in the 'unclassified service' in addition to those currently provided by paragraph (15) of Code Section 45-20-2. The State Personnel Administration regulations and restrictions concerning compensation and promotion shall not apply to such employees."

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

ARTICLE 3

INVESTIGATIONS AND HEARINGS

46-2-53. Reports, rate schedules, orders, rules, or regulations of commission as admissible evidence in court proceedings.

Reserved. Repealed by Ga. L. 2011, p. 994, § 89/HB 24, effective January 1, 2013.

Editor's notes. — This Code section was based on Ga. L. 1907, p. 72, § 5; Civil Code 1910, § 2626; Ga. L. 1922, p. 143, § 1; Code 1933, § 93-504.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

46-2-59. Permissible parties in proceedings before commission; intervention in proceedings generally; limited appearances; procedure for granting leave to intervene.

Law reviews. — For article, "Administrative Law," see 63 Mercer L. Rev. 47 (2011).

JUDICIAL DECISIONS

Municipalities had standing to appeal agency's ruling despite failing to intervene in agency proceedings. — As a municipal association intervened in rate-making proceedings before the Georgia Public Service Commission (PSC), and certain municipalities joined the association's arguments in the trial court, the municipalities had standing to appeal the PSC's decision concerning a reallocation of franchise fees paid to the cities, even though the municipalities did not apply to intervene before the PSC under O.C.G.A. § 46-2-59. Unified Gov't v. Ga. PSC, 293 Ga. App. 786, 668 S.E.2d 296 (2008).

Lack of standing to seek judicial review. — Trial court properly concluded that taxpayers lacked standing to seek judicial review of the Georgia Public Service Commission's (PSC) certification or-

der because the taxpayers did not file a timely application to intervene in the certification proceedings and, thus, did not satisfy the first requirement of the Administrative Procedure Act, O.C.G.A. § 50-13-19(a); the taxpayers had an available administrative remedy by applying for intervention status in the proceedings conducted by the PSC on the company's application for certification within 30 days following the first published notice of the proceeding, O.C.G.A. § 46-2-59(c), but the taxpayers did not seek to intervene until eight months after notice of the proceedings were first published by the PSC. Fulton County Taxpayers Found., Inc. v. Ga. PSC, 287 Ga. 876, 700 S.E.2d 554 (2010).

ARTICLE 5

MISCELLANEOUS OFFENSES AND PENALTIES

46-2-91. Penalties recoverable before commission; superior court filing of certain commission orders; venue; effect of judgment.

(a) Any person, firm, or corporation (referred to in this Code section as a "utility") subject to the jurisdiction of the commission, which utility willfully violates any law administered by the commission or any duly promulgated regulation issued thereunder or which fails, neglects, or refuses to comply with any order after notice thereof, shall be liable to a penalty not to exceed $15,000.00 for such violation and an additional penalty not to exceed $10,000.00 for each day during which such violation continues.

(b)(1) The commission, after a hearing conducted after not less than 30 days' notice, shall determine whether any utility has willfully violated any law administered by the commission or any duly promulgated regulation issued thereunder, or has failed, neglected, or refused to comply with any order of the commission. Upon an appropriate finding of a violation, the commission may impose by order such civil penalties as are provided by subsection (a) of this Code section. In each such proceeding, the commission shall maintain a record as provided in paragraph (8) of subsection (a) of Code Section 50-13-13 including all pleadings, a transcript of proceedings, a statement of each matter of which the commission takes official notice, and all staff memoranda or data submitted to the commission in connection with its consideration of the case. All penalties and interest thereon (at the rate of 10 percent per annum) recovered by the commission shall be paid into the general fund of the state treasury.

(2) Any party aggrieved by a decision of the commission may seek judicial review as provided in subsection (c) of this Code section.

(c)(1) Any party who has exhausted all administrative remedies available before the commission and who is aggrieved by a final

decision of the commission in a proceeding described in subsection (b) of this Code section may seek judicial review of the final order of the commission in the Superior Court of Fulton County.

(2) Proceedings for review shall be instituted by filing a petition within 30 days after the service of the final decision of the commission or, if a rehearing is requested, within 30 days after the decision thereon. A motion for rehearing or reconsideration after a final decision by the commission shall not be a prerequisite to the filing of a petition for review. Copies of the petition shall be served upon the commission and all parties of record before the commission.

(3) The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is aggrieved by the decision, and the ground, as specified in paragraph (6) of this subsection, upon which the petitioner contends that the decision should be reversed. The petition may be amended by leave of court.

(4) Within 30 days after service of the petition, or within such further time as is stipulated by the parties or as is allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate that the record be limited may be taxed for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and there were good reasons for failure to present it in the proceedings before the agency, the court may order that the additional evidence be taken before the commission upon such procedure as is determined by the court. The commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(6) The review shall be conducted by the court without a jury and shall be confined to the record. The court shall not substitute its judgment for that of the commission as to the weight of the evidence on questions of fact. The court may affirm the decision of the commission or remand the case for further proceedings. The court may reverse the decision of the commission if substantial rights of the petitioner have been prejudiced because the commission's findings, inferences, conclusions, or decisions are:

(A) In violation of constitutional or statutory provisions;

(B) In excess of the statutory authority of the commission;

(C) Made upon unlawful procedure;

(D) Clearly not supported by any reliable, probative, and substantial evidence on the record as a whole; or

(E) Arbitrary or capricious.

(7) A party aggrieved by an order of the court in a proceeding authorized under subsection (b) of this Code section may appeal to the Supreme Court of Georgia or to the Court of Appeals of Georgia in accordance with Article 2 of Chapter 6 of Title 5, the "Appellate Practice Act."

(d) The commission may file in the superior court in the county in which the person under order resides or in the county in which the violation occurred or, if the person is a corporation, in the county in which the corporation maintains its principal place of business a certified copy of a final order of the commission unappealed or of a final order of the commission affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. The judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by the court. (Code 1933, § 93-309.2, enacted by Ga. L. 1973, p. 677, § 2; Ga. L. 1992, p. 1640, § 1; Ga. L. 1997, p. 708, § 1; Ga. L. 2004, p. 366, § 1; Ga. L. 2006, p. 708, § 1/SB 210.)

The 2006 amendment, effective July 1, 2006, added subsection (d).

CHAPTER 3

ELECTRICAL SERVICE

Article 1

Generation and Distribution of Electricity Generally

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Allocation of Territorial Rights to Electric Suppliers

Sec.
46-3-3. Definitions.

Part 2

High-voltage Safety

46-3-38. Applicability of part to moving or transportation of houses or buildings.

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Sec.
46-3-60. Short title.
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Article 3

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Article 4

Electric Membership Corporations and Foreign Electric Cooperatives

Part 1

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Part 12

Dissolution of Electric Membership Corporations

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Electric Company's Failure to Exercise Reasonable Care Regarding Downed Transmission Line or Pole, 17 POF2d 643.

Electric Company's Negligence as to Workers near Transmission Line, 23 POF2d 633.

Negligence of Landowner as to Contact of Movable Machine with Electric Line, 30 POF2d 371.

Public Fear of Electromagnetic Fields as Basis for Recovery of Damages for Property Devaluation Caused by Nearby Power Line, 47 POF3d 473.

ARTICLE 1

GENERATION AND DISTRIBUTION OF ELECTRICITY GENERALLY

PART 1

ALLOCATION OF TERRITORIAL RIGHTS TO ELECTRIC SUPPLIERS

46-3-1. Short title.

Law reviews. — For annual survey of construction law, see 56 Mercer L. Rev. 109 (2004).

JUDICIAL DECISIONS

Cited in City of LaGrange v. Ga. PSC, 296 Ga. App. 615, 675 S.E.2d 525 (2009).

46-3-2. Legislative findings and declaration of policy.

JUDICIAL DECISIONS

Cited in Jackson Elec. Mbrshp. Corp. v. Ga. PSC, 294 Ga. App. 253, 668 S.E.2d 867 (2008); City of LaGrange v. Ga. PSC, 296 Ga. App. 615, 675 S.E.2d 525 (2009).

46-3-3. Definitions.

As used in this part, the term:

(1) "Assigned area" means an enclosed geographic area assigned to only one electric supplier by the commission or by this part, and inside which the assignee electric supplier shall have the exclusive right to extend and continue furnishing service to new premises, except as otherwise provided in this part.

(2) "Electric membership corporation" has the meaning provided by paragraph (3) of Code Section 46-3-171.

(3) "Electric supplier" means any electric light and power company subject to regulation by the commission, any electric membership corporation furnishing retail service in this state, and any municipality which furnishes such service within this state.

(4) "Line" means any conductor for the distribution or transmission of electricity other than a conductor operating at a potential of 120,000 volts or more. However, a conductor that initially constitutes a line shall not cease being a line if, after March 29, 1973, it is operating at a potential in excess of 120,000 volts.

(5) "Municipality" means:

(A) Any geographically defined political subdivision of this state, other than a county, performing or authorized to perform multiple and substantial municipal functions, specifically including either the function of furnishing retail electric service or the function of granting to electric suppliers street franchise rights for use in furnishing retail electric service;

(B) Any geographically defined political subdivision, or agency thereof, of this state if at any relevant time it lawfully furnishes retail electric service; and

(C) Any political subdivision of any other state which furnishes retail electric service within this state.

(6) "Premises" means the building, structure, or facility to which electricity is being or is to be furnished, provided that two or more buildings, structures, or facilities which are located on one tract or contiguous tracts of land and are utilized by one electric consumer shall together constitute one premises; provided, however, that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one premises if the permanent service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility; provided, further, that an outdoor security light, or an outdoor sign requiring less than 2200 watts, shall not constitute a premises.

(7) "Primary supplier" within a municipality in existence on March 29, 1973, means, either:

(A) That electric supplier which, on March 29, 1973, is furnishing service to the majority or to a plurality, whichever is the case, of the retail electric meters then inside the corporate limits of the municipality; or

(B) That electric supplier to which the commission has reassigned a geographic area, previously assigned to another electric supplier, located within such municipality as its limits existed on March 29, 1973.

(8) "Secondary supplier" within a municipality in existence on March 29, 1973, means any electric supplier which owns lines on that date within such municipality and which is not a primary supplier.

(9) "Service" means retail electric service and includes temporary or construction service as well as permanent service but excludes wholesale service and sales for resale.

(10) "To own" or "to belong" or the like means, wherever used in reference to lines being used by an electric supplier, to have any proprietary or possessory interest.

(11) "Unassigned area-A" means a geographic area which, between March 29, 1973, and Sept. 1, 1975, was not an assigned area and was not declared to be an unassigned area-B.

(12) "Unassigned area-B" means a geographic area which has not been assigned and which has been declared by the commission to be, or by operation of this part becomes, an unassigned area-B, and inside which an electric supplier shall have the right to extend and thereafter continue furnishing service to new premises locating therein if chosen by the consumer utilizing such premises, provided that an electric supplier whose line, as it exists on March 29, 1973, or as thereafter lawfully constructed to serve new premises pursuant to this part, is at least partially within 500 feet of such new premises shall have the exclusive right to extend and continue furnishing service to such premises if the line of every other electric supplier so existing or so thereafter constructed is at that time wholly more than 500 feet from such premises.

(13) "Wholly new municipality" means a municipality initially coming into existence after March 29, 1973, but not one resulting from the reincorporation of all or any portion of a geographic area theretofore contained in a previously existing municipality or from the merger, consolidation, or any other combination of two or more political subdivisions which are counties or incorporated cities. (Ga. L. 1973, p. 200, § 3; Ga. L. 1982, p. 3, § 46; Ga. L. 2006, p. 72, § 46/SB 465.)

The 2006 amendment, effective April 14, 2006, part of an Act to revise, modernize, and correct the Code, substituted the present provisions of paragraph (2) for the former provisions, which read: "'Electric membership corporation' means a corporation organized under Article 2 of this chapter."

JUDICIAL DECISIONS

New premises distinct from older facility.

Under O.C.G.A. § 46-3-8(a), a utility was entitled to provide electrical service to a high school's new auditorium, even though a city had been providing service to the school itself, as the utility was providing service to new premises. O.C.G.A. § 46-3-3(6) defined "premises" as separately metered structures; the auditorium was separately metered from the school, and the city could not explain how the facilities could properly be billed through a single master meter. City of LaGrange v. Ga. PSC, 296 Ga. App. 615, 675 S.E.2d 525 (2009).

Continuing service under grandfather clause. — Trial court properly upheld an agency decision that a power company had the right to continue service to an apartment complex under the grandfather clause to the Territorial Act, O.C.G.A. § 46-3-8(b), after individual meters were installed to replace one master meter because none of the exceptions to the grandfather clause existed and the

challenging electric corporation failed to raise the corporation's challenge to the application of the grandfather clause before the agency. Excelsior Elec. Mbrshp. Corp. v. Ga. PSC, 322 Ga. App. 687, 745 S.E.2d 870 (2013).

46-3-4. Assignment or declaration as unassigned areas-B of geographic areas outside municipal limits as of March 29, 1973.

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010). For article, "The Chevron Two-Step in Georgia's Administrative Law," see 46 Ga. L. Rev. 871 (2012).

JUDICIAL DECISIONS

Corridor rights. — O.C.G.A. § 46-3-4 establishes a method for assigning an electrical service territory and, within that framework, provides corridor-right protection for non-assigned suppliers who own lines in an area on the assignment date; thus, as power company one owned a transmission line that was located within 500 feet of two office buildings when a service territory was assigned to it in 1975, power company two could not establish corridor rights for supplying power to the two buildings even though company two had acquired the subject transmission line seven years after the territorial assignment. Ga. Power Co. v. Ga. PSC, 296 Ga. App. 556, 675 S.E.2d 294 (2009).

An electric membership corporation did not obtain corridor rights under O.C.G.A. § 46-3-4(4) to serve customers in another power company's territory by virtue of the corporation's ownership of a transmission line in that area because there was only one supplier when the territory was assigned to the other power company. Sumter Elec. Mbrshp. Corp. v. Ga. Power Co., 286 Ga. 605, 690 S.E.2d 607 (2010).

46-3-8. Exceptions, grandfather rights, and other rights.

Law reviews. — For annual survey on administrative law, see 61 Mercer L. Rev. 1 (2009). For article, "The Chevron Two-Step in Georgia's Administrative Law," see 46 Ga. L. Rev. 871 (2012).

JUDICIAL DECISIONS

Large load consumer choice of electrical supplier evidenced by contract. — Under the Georgia Territorial Act, a large load customer's choice of an electrical supplier must be evidenced by a binding contract with the supplier, reached through mutual assent and meeting the other requirements for contract formation under Georgia law. Jackson Elec. Mbrshp. Corp. v. Ga. PSC, 294 Ga. App. 253, 668 S.E.2d 867 (2008), cert. denied, No. S09C0356, 2009 Ga. LEXIS 201 (Ga. 2009).

Large load consumer had valid contract with designated territorial supplier. — An electric membership corporation alleged that an electric utility company, a consumer's designated territorial supplier, falsely told the consumer it did not qualify as a large load consumer under O.C.G.A. § 46-3-8(a) and thus had to select the utility as the consumer's provider, and that the consumer's request-for-services form was void because the form was based on this misrepresentation. As the hearing officer's findings—that the allegations of misrepresentation were untenable and that the consumer and utility had a binding contract—were supported by the evidence, the findings were upheld. Jackson Elec. Mbrshp. Corp. v. Ga. PSC, 294 Ga.

App. 253, 668 S.E.2d 867 (2008), cert. denied, No. S09C0356, 2009 Ga. LEXIS 201 (Ga. 2009).

Transfer versus continuance of services. — A city, which had been providing electricity to a high school, argued that a utility could not continue to service the school's ball field lights because the utility did not comply with the requirements of O.C.G.A. § 46-3-8(c)(2). This argument failed because § 46-3-8(c)(2) pertains to the transfer of electric service as opposed to the continuance of service. City of LaGrange v. Ga. PSC, 296 Ga. App. 615, 675 S.E.2d 525 (2009).

Continuing service under grandfather clause. — Trial court properly upheld an agency decision that a power company had the right to continue service to an apartment complex under the grandfather clause to the Territorial Act, O.C.G.A. § 46-3-8(b), after individual meters were installed to replace one master meter because none of the exceptions to the grandfather clause existed and the challenging electric corporation failed to raise the corporation's challenge to the application of the grandfather clause before the agency. Excelsior Elec. Mbrshp. Corp. v. Ga. PSC, 322 Ga. App. 687, 745 S.E.2d 870 (2013).

New premises distinct from older facility.

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Cited in Federated Dep't Stores, Inc. v. Ga. PSC, 278 Ga. App. 239, 628 S.E.2d 658 (2006).

46-3-11. Application by electric supplier of discriminatory rates, charges, or service rules or regulations; prohibited acts by electric suppliers generally.

JUDICIAL DECISIONS

Electric supplier may recover underbilled services. — Georgia Supreme Court's decisions under the Georgia Territorial Electric Service Act (GTESA), O.C.G.A. § 46-3-1 et seq., in cases involving under-billing by electricity providers, are not necessarily binding with regard to billing by other utility companies; however, there is no case law suggesting that natural gas providers warrant greater protection than that afforded to electric vendors under the GTESA; with regard to electric provider under-billing cases, the Georgia Supreme Court has not limited the assertion of affirmative defenses to "innocent" electric consumers only and therefore, the United States District Court for the Northern District of Georgia, Atlanta Division, will not impose an "innocent consumer" prerequisite to the assertion of an affirmative defense to a gas utility provider's under-billing claim. City of Lawrenceville v. Ricoh Elecs., Inc., 370 F. Supp. 2d 1328 (N.D. Ga. 2005).

Cited in Federated Dep't Stores, Inc. v. Ga. PSC, 278 Ga. App. 239, 628 S.E.2d 658 (2006).

PART 2

HIGH-VOLTAGE SAFETY

46-3-30. Short title.

Law reviews. — For survey article on construction law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 85 (2003).

46-3-31. Purpose of part.

JUDICIAL DECISIONS

Cited in Glass Sys. v. Ga. Power Co., 288 Ga. 85, 703 S.E.2d 605 (2010).

46-3-33. Required conditions for commencing work within ten feet of high-voltage line.

Law reviews. — For survey article on construction law, see 59 Mercer L. Rev. 55 (2007). For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Discretion as to protective measures. — O.C.G.A. § 46-3-33(2) clearly gives an owner or operator of high-voltage electric lines discretion in deciding what protective measures to take. Golden v. Vickery, 285 Ga. App. 216, 645 S.E.2d 695 (2007), cert. denied, 2007 Ga. LEXIS 664 (Ga. 2007).

Failure to give notice allowed power company to maintain indemnity action against employer. — Purpose of O.C.G.A. § 46-3-40(b), allowing a power company to pursue an indemnity action against an employer whose workers were injured by contact with high voltage power lines because the workers failed to notify the power company of the work, was to prevent injury, a legitimate legislative purpose, and the purpose was served because the threat of an indemnity action would motivate employers to follow the notice requirement and thereby prevent accidents. Therefore, the statute did not violate substantive due process. Glass Sys. v. Ga. Power Co., 288 Ga. 85, 703 S.E.2d 605 (2010).

46-3-34. Utilities protection center; funding of activities; notice of work; delay; responsibility for completing safety requirements.

JUDICIAL DECISIONS

Power company not liable if notice not given.

In a suit by employees of a subcontractor who were electrocuted while working on a construction project, the trial court properly granted summary judgment to a power company based on lack of notice required by O.C.G.A. § 46-3-34. The notice given by the general contractor had nothing to do with the work being per-

formed by the subcontractor. Dalton v. 933 Peachtree, L.P., 291 Ga. App. 123, 661 S.E.2d 156 (2008).

46-3-38. Applicability of part to moving or transportation of houses or buildings.

In addition to the exceptions set forth in Code Section 46-3-37, this part shall not be construed as applying to and shall not apply to the moving or transportation of houses or buildings or parts thereof when such moving is under the jurisdiction of, and is undertaken pursuant to authority granted by, the Department of Public Safety. (Ga. L. 1960, p. 181, § 4; Code 1981, § 46-3-37; Code 1981, § 46-3-38, as redesignated by Ga. L. 1992, p. 2141, § 1; Ga. L. 2012, p. 580, § 15/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted "Department of Public Safety" for "Georgia Public Service Commission" at the end of this Code section.

46-3-40. Criminal penalty; strict liability for injury or damage; indemnification; liability for cost of delay.

JUDICIAL DECISIONS

Indemnity actions pursuant to HVSA.

Purpose of O.C.G.A. § 46-3-40(b), allowing a power company to pursue an indemnity action against an employer whose workers were injured by contact with high voltage power lines because the workers failed to notify the power company of the work, was to prevent injury, a legitimate legislative purpose, and the purpose was served because the threat of an indemnity action would motivate employers to follow the notice requirement and thereby prevent accidents. Therefore, the statute did not violate substantive due process. Glass Sys. v. Ga. Power Co., 288 Ga. 85, 703 S.E.2d 605 (2010).

Part 4

Solar Power Free-Market Financing

Effective date. — This part became effective July 1, 2015.

46-3-60. Short title.

This part shall be known and may be cited as the "Solar Power Free-Market Financing Act of 2015." (Code 1981, § 46-3-60, enacted by Ga. L. 2015, p. 1438, § 1/HB 57.)

46-3-61. Findings.

The General Assembly hereby finds and declares that:

(1) It is in the public interest to facilitate customers of electric service providers to invest in and install on their property solar technologies of their choice;

(2) Free-market financing of solar technologies may provide more customers with opportunities to install solar technology;

(3) Solar energy procurement agreements, and other similar financing arrangements, including those in which the payments are based on the performance and output of the solar technology installed on the property of customers of electric service providers, are financing arrangements which may help reduce or eliminate upfront costs involved in solar technology investments and installation by such customers; and

(4) Individuals and entities which offer or receive such financing opportunities through solar energy procurement agreements pursuant to this part should not be considered or treated as electric service providers. (Code 1981, § 46-3-61, enacted by Ga. L. 2015, p. 1438, § 1/HB 57.)

46-3-62. Definitions.

As used in this part, the term:

(1) "Affiliate" means any entity directly or indirectly controlling or controlled by or under direct or indirect common control with an electric service provider.

(2) "Capacity limit" means a peak generating capacity in alternating current that is no greater than:

(A) Ten kilowatts, for a residential application; or

(B) One hundred and twenty-five percent of the actual or expected maximum annual peak demand of the premises the solar technology serves, for a commercial application.

(3) "Control" means the power to significantly influence the management and policies of any affiliate, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise.

(4) "Electric service provider" means any electric supplier that is engaged in the business of distributing electricity to retail electric customers in this state.

(5) "Electric supplier" has the same meaning as provided in paragraph (3) of Code Section 46-3-3.

(6) "Entity" means any business entity, including, but not limited to, a corporation, partnership, limited liability company, or sole proprietorship.

(7) "Maximum annual peak demand" means the maximum single hour electric demand actually occurring or expected to occur at a premises, measured at the premises' electrical meter.

(8) "Person" means any individual or entity.

(9) "Premises" has the same meaning as provided in paragraph (6) of Code Section 46-3-3.

(10) "Property" means the tract of land on which a premises is located, together with all adjacent contiguous tracts of land utilized by the same retail electric customer.

(11) "Retail electric customer" means a person who purchases electric service from an electric service provider for such person's use and not for the purpose of resale.

(12) "Solar energy procurement agreement" means any agreement, lease, or other arrangement under which a solar financing agent finances the installation, operation, or both of solar technology in which the payments are based on the performance and output of the solar technology installed on the property.

(13) "Solar financing agent" means any person, including an electric service provider and an affiliate, whose business includes the leasing, financing, or installation of solar technology.

(14) "Solar technology" means a system that:

(A) Generates electric energy that is fueled solely by ambient sunlight;

(B) Is installed upon property owned or occupied by a retail electric customer; and

(C) Is connected to the electric service provider's distribution system on either side of the electric service provider's meter. (Code 1981, § 46-3-62, enacted by Ga. L. 2015, p. 1438, § 1/HB 57.)

46-3-63. Financing of solar technology; electric service provider prohibited from interfering with use of solar technology; electric service provider not liable for certain acts.

(a) Solar technology at or below the capacity limit may be financed by a retail electric customer through a solar financing agent utilizing a solar energy procurement agreement, provided that:

(1) Such solar technology and the installation thereof complies with all applicable state laws and all applicable county and municipal ordinances and permitting requirements; and

(2) The retail electric customer or the solar financing agent gives notice to the electric service provider serving the premises at least 30 days prior to operation of such solar technology.

(b) No electric service provider shall prevent or otherwise interfere with the installation, operation, or financing of solar technology by a retail electric customer through a solar financing agent pursuant to subsection (a) of this Code section, except that an electric service provider may require the retail electric customer to meet applicable safety, power quality, and interconnection requirements as provided in Code Section 46-3-64.

(c) An electric service provider not acting as a solar financing agent at the specific property where the liability arises shall not be liable for any loss of assets, injury, or death that may arise from, be caused by, or relate to:

(1) The act, or failure to act, of the retail electric customer or the solar financing agent relating to the solar technology;

(2) The solar energy procurement agreement or any other agreement between the retail electric customer and the solar financing agent; or

(3) The solar technology.

(d) A solar financing agent which is not an electric service provider or affiliate may provide solar energy procurement agreements authorized by this part, notwithstanding the restrictions of Part 1 of this article.

(e) A property with multiple premises may have multiple solar technologies financed by solar energy procurement agreements; provided, however, that a single solar technology is not connected to multiple premises and that the cumulative capacity of solar technologies connected to a premises shall not exceed the capacity limit. Solar technology installed to serve one premises shall only generate electric energy that is used on and by such premises or fed back to an electric service provider. (Code 1981, § 46-3-63, enacted by Ga. L. 2015, p. 1438, § 1/HB 57.)

46-3-64. Requirements upon a retail electric customer utilizing solar technology connected to an electric system of an electric service provider.

(a) For solar technology with a peak generating capacity of not more than 10 kilowatts for a residential application and not more than 100 kilowatts for a commercial application, the electric service provider may require the retail electric customer or solar financing agent to provide, at the retail electric customer's or solar financing agent's

expense, all equipment necessary to meet applicable safety, power quality, and interconnection requirements established by the National Electrical Code, National Electrical Safety Code, Institute of Electrical and Electronics Engineers, and Underwriters Laboratories, prior to interconnecting the solar technology to the electric service provider's electric system. If such applicable safety, power quality, and interconnection requirements are met, an electric service provider shall not require compliance with additional safety or performance standards, require the performance of or payment for additional tests, or require the purchase of additional liability insurance.

(b) For solar technology with a peak generating capacity of more than 10 kilowatts for a residential application and more than 100 kilowatts for a commercial application, the electric service provider may require compliance with additional requirements beyond those specified in subsection (a) of this Code section. Such additional requirements shall include only those necessary to protect public safety, power quality, and system reliability. (Code 1981, § 46-3-64, enacted by Ga. L. 2015, p. 1438, § 1/HB 57.)

46-3-65. Clarification of who shall be considered an electric supplier and an electric service provider.

(a) Provided that the solar technology does not exceed the capacity limit, the leasing, financing, or installation of such solar technology through a solar energy procurement agreement shall not be considered the provision of electric service to the public, retail electric service, or retail supply of electricity by the solar financing agent, and neither the retail electric customer nor the solar financing agent shall be considered an electric supplier within the meaning of Part 1 of this article or in violation of exclusive electric service rights arising therein.

(b) Notwithstanding any other provision of law, a solar financing agent's actions under this part shall not cause the solar financing agent to be considered an electric service provider for any purpose under this title.

(c) Any electric service provider or affiliate shall be authorized to become a solar financing agent; provided, however, that the restrictions of Part 1 of this article shall apply to any such electric service provider's provision of solar technology. An electric service provider and an affiliate shall be subject to subsection (a) of Code Section 46-3-11 in providing services as a solar financing agent. (Code 1981, § 46-3-65, enacted by Ga. L. 2015, p. 1438, § 1/HB 57.)

46-3-66. Construction and applicability.

(a) Except as provided in subsection (d) of Code Section 46-3-63 and subsections (a) and (b) of Code Section 46-3-65, nothing in this part

shall be construed as modifying the restrictions of Part 1 of this article on the sale, offer for sale, or distribution of retail electric service in this state.

(b) Nothing in this part shall be construed to create or alter rights in real property or to change any restrictions or regulations on the use of real property that may exist under any means, including, but not limited to, a covenant, contract, ordinance, or state or federal law.

(c) Nothing in this part shall be construed to restrict, affect, or diminish the ability of any county or municipality to adopt or enforce ordinances, permits, or regulations, or otherwise to exercise any lawful power under the Constitution or laws of this state, including, without limitation, those affecting zoning, land use, or the use of public rights of way.

(d) Nothing in this part shall be applied to impair any obligation or right under a contract entered into prior to the effective date of this part or any amendment to or extension of such contract.

(e) Nothing in this part shall be applied to any party to a wholesale electric power or transmission service contract entered into prior to the effective date of this part or to any original party to such contract that is subsequently amended or extended to the extent that the financing and installation of the solar technology would cause such party to be in breach of such contract or increase the costs of such contract by $100,000.00 or more. Any legal successor to substantially all rights and assets of a party shall also be considered a party under this subsection. (Code 1981, § 46-3-66, enacted by Ga. L. 2015, p. 1438, § 1/HB 57.)

ARTICLE 3

MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA

46-3-128. Declaration of authority property as public property; payments by authority in lieu of taxes; tax exemption for authority property, income, obligations, and debt interest.

(a) It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and that the authority is an institution of purely public charity performing an essential governmental function.

(b)(1) The property of the authority is declared, and shall in all respects be considered, to be public property. Title to the authority's property shall be held by the authority only for the benefit of the public; and the use of such property pursuant to this article shall be

and is declared to be for essential public and governmental purposes, that is, for the promotion of public general welfare in the matter of providing an adequate, dependable, and economical electric power supply in an effort to better the general condition of society in this state, which promotion is declared to be a public beneficence for the good of humanity and for the general improvement and happiness of society.

(2)(A) It is recognized, however, that removal from local tax digests of the value of all property owned by the authority might impose an unfair burden on many taxpayers whose property is taxable. In the interest of weighing these benefits and concerns and arriving at an equitable policy regarding treatment of authority property, the General Assembly finds and declares that equity requires that the exemption presently applicable to the authority's property should remain in effect. However, the General Assembly also finds and declares that in the future the authority should rightfully make payments in lieu of taxes so that the authority may fulfill its good and public purposes without incidental harm to the state's local governments.

(B) With respect to tangible property owned by the authority and included in its project one and project two, as those projects are constituted as of March 25, 1980, or thereafter under the authority's power revenue bond resolution and general power revenue bond resolution, and supplemental resolutions thereto, the authority shall begin making payments in lieu of taxes in such manner and amounts as provided in this Code section in the earlier of (i) the first year after all of the bonds issued by the authority to finance each such respective project have been fully redeemed or (ii) the year 2020.

(C) With respect to tangible property acquired or constructed by the authority after March 25, 1980, and not included in its project one or project two, the authority shall begin making payments in lieu of taxes, in such manner and amounts as provided in this Code section, in the year 1981 or such later year as the authority first acquires or constructs such property.

(D) In each year in which the authority is required by this Code section to make payments in lieu of taxes, it shall file a return within the same time and in the same form and manner as public utilities. The taxing authorities shall assess the tangible property of the authority which is made subject by this Code section to payments in lieu of taxes in accordance with the law and procedures applicable to public utilities and shall apply to such assessments in each year in which any such payments are due the appropriate millage levies of the state and of the political subdivi-

sions in which such property is located in order to arrive at the amounts of the respective payments in lieu of taxes. The authority shall be notified of the amounts of the payments in lieu of taxes due and shall pay such amounts to the state and respective political subdivisions within the time in which payments of taxes by public utilities are allowed or required.

(c) Except as specifically provided in this Code section for payments in lieu of taxes, all property of the authority, all income, obligations, and interest on the bonds and notes of the authority and all transfers of such property, bonds, or notes shall be and are declared to be exempt from taxation by the state or any of its political subdivisions. (Ga. L. 1975, p. 107, § 6; Ga. L. 1980, p. 1128, § 1; Ga. L. 2014, p. 866, § 46/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, deleted the extra subsection (b) designation preceding subparagraph (2)(A).

ARTICLE 4

ELECTRIC MEMBERSHIP CORPORATIONS AND FOREIGN ELECTRIC COOPERATIVES

PART 1

GENERAL PROVISIONS

46-3-170. Short title.

JUDICIAL DECISIONS

Mandamus unavailable for nominee seeking to serve on electric membership corporation. — Trial court erred by granting a nominee's writ of mandamus because under O.C.G.A. § 9-6-23, mandamus did not lie to enforce purely private contract rights and the nominee's efforts to be qualified as a person to sit on the board of an electric membership corporation was a private right as board members were not public officers within the meaning of O.C.G.A. § 9-6-20. Rigby v. Boatright, 294 Ga. 253, 751 S.E.2d 851 (2013).

46-3-175. Certification of documents by Secretary of State.

The Secretary of State, at any time, upon the request of any person, shall make and certify additional copies of any document filed with his or her office and of the certificate, if any, issued by the Secretary of State in connection with the filing of the document, under this article, upon payment to the Secretary of State of the fee provided for in Code Section 46-3-502. (Code 1933, § 34C-106, enacted by Ga. L. 1981, p. 1587, § 1; Ga. L. 2011, p. 99, § 90/HB 24.)

The 2011 amendment, effective January 1, 2013, deleted former subsection (a); deleted the former subsection (b) designation; inserted "or her" near the middle of this Code section; and substituted "the Secretary of State" for "him" near the end of this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

Part 2

Corporate Purposes and Powers

46-3-200. Purposes of electric membership corporations.

JUDICIAL DECISIONS

Standing to claim tax refund. — Electrical membership corporation lacked direct standing to pursue a claim for a refund of sales tax on behalf of its members/patrons, pursuant to O.C.G.A. § 48-2-35(b)(1), as it was not a "taxpayer" within O.C.G.A. § 48-2-35(b)(4) for purposes of bringing an action for a tax refund as it did not bear the burden of the tax because the tax was passed on to its members/patrons; one purpose of the EMC was to furnish electrical energy and service to its members, pursuant to O.C.G.A. § 46-3-200(1), and the sale of electricity required a retail sales tax paid to the EMC, which was passed onto the Georgia Commission of Revenue, pursuant to O.C.G.A. § 48-8-30(a). Sawnee Elec. Mbrshp. Corp. v. Ga. Dep't of Revenue, 279 Ga. 22, 608 S.E.2d 611 (2005).

Mandamus unavailable for nominee seeking to serve on electric membership corporation. — Trial court erred by granting a nominee's writ of mandamus because, under O.C.G.A. § 9-6-23, mandamus did not lie to enforce purely private contract rights and the nominee's efforts to be qualified as a person to sit on the board of an electric membership corporation was a private right as board members were not public officers within the meaning of O.C.G.A. § 9-6-20. Rigby v. Boatright, 294 Ga. 253, 751 S.E.2d 851 (2013).

46-3-201. Existence of electric membership corporations under articles of incorporation; duration of corporations; powers of corporations generally.

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007). For survey article on zoning and land use law, see 59 Mercer L. Rev. 493 (2007).

JUDICIAL DECISIONS

Utility's power of eminent domain. — Forsyth County, Ga., Unified Development Code §§ 21-6.1, 21-6.5, were defective because they required a utility to successfully comply with the ordinance's procedures, and authorized the county to deny "any or all" portions of an application; as such, they were unconstitutional infringements on the utility's legislatively-delegated power of eminent

domain. Forsyth County v. Ga. Transmission Corp., 280 Ga. 664, 632 S.E.2d 101 (2006).

46-3-204. Limitations as to actions growing out of acquisition of rights of way, easements, or occupation of lands of others; damages recoverable.

JUDICIAL DECISIONS

Statute of limitations is constitutional. — One-year statute of limitations under O.C.G.A. § 46-3-204 is constitutional because the statute does not violate the Equal Protection Clause of the Georgia Constitution and is not unconstitutionally vague. Daniel v. Amicalola Elec. Mbrshp. Corp., 289 Ga. 437, 711 S.E.2d 709 (2011).

Statute not governing claims against utility for noise pollution. — Trial court properly denied summary judgment to an electrical plant operator on nearby landowners' nuisance claims. O.C.G.A. § 46-3-204 governed the acquisition of rights of way and did not apply to noise pollution claims, and the evidence as to whether the noise and vibrations from the plant were abatable nuisances or permanent nuisances was in sharp conflict. Oglethorpe Power Corp. v. Forrister, 303 Ga. App. 271, 693 S.E.2d 553 (2010).

Application to "all rights of action". — Trial court correctly concluded that O.C.G.A. § 46-3-204 applied to the class member claims. The class was defined to include owners of land onto which the electric company unlawfully entered to erect structures; thus, the developer and other potential class members could not avoid the limiting language of the Code section by seeking equitable relief in the form of deed reformation because the Code section applied to "all rights of action." Boston Creek Holdings, LLLP v. Amicalola Elec. Mbrshp. Corp., 320 Ga. App. 375, 739 S.E.2d 811 (2013).

Claims were not time-barred. — Property owners' claims against a utility were not time-barred because the owners filed suit within two months of the utility's alleged trespass and conversion as the destruction of more vegetation by the utility, which had previously clear cut trees on the owners' property, was new. Given the evidence that a utility representative disclaimed any easement or other right to enter the property again after the first incident, the second entry could not be deemed as a matter of law to be part of a continuing trespass. Daniel v. Amicalola Elec. Mbrshp. Corp., 289 Ga. 437, 711 S.E.2d 709 (2011).

Claims were time-barred. — Property owners' argument that a utility defrauded the owners by claiming that the utility had no easement and no plan to enter the owners' property again did not toll the owners' claims relating to the entry of the owners' property because the trespass was completed and would not recur, and no matter what, the utility could not put back the trees and vegetation the utility had clear-cut, so the conversion was complete. There was no allegation, much less evidence, that the utility misled the owners as to a damages action. Daniel v. Amicalola Elec. Mbrshp. Corp., 289 Ga. 437, 711 S.E.2d 709 (2011).

PART 5

MEMBERS

46-3-265. Quorum of members; adjournment of meeting by majority of members represented at meeting.

JUDICIAL DECISIONS

Proxy voting amendment violated settlement agreement. — Electric membership corporation (EMC) board's proxy voting bylaw amendment violated the terms of a settlement agreement reached between the EMC and the corporation's members because the amendment significantly changed the conditions under which the parties' agreed-upon plan for proposing proxy voting to the members was implemented. It therefore violated the spirit if not the letter of the agreement in contravention of O.C.G.A. § 13-4-20. Brown v. Pounds, 289 Ga. 338, 711 S.E.2d 646 (2011).

46-3-268. Voting by proxy generally.

JUDICIAL DECISIONS

Proxy voting amendment violated settlement agreement. — Electric membership corporation (EMC) board's proxy voting bylaw amendment violated the terms of a settlement agreement reached between the EMC and the EMC's members because the amendment significantly changed the conditions under which the parties' agreed-upon plan for proposing proxy voting to the members was implemented. It therefore violated the spirit if not the letter of the agreement in contravention of O.C.G.A. § 13-4-20. Brown v. Pounds, 289 Ga. 338, 711 S.E.2d 646 (2011).

PART 6

DIRECTORS AND OFFICERS

46-3-290. Management of business and affairs of electric membership corporation by board of directors; knowledge of limitations on directors' authority required; qualifications; compensation and reimbursement for expenses.

JUDICIAL DECISIONS

Mandamus unavailable for nominee seeking to serve on electric membership corporation. — Trial court erred by granting a nominee's writ of mandamus because under O.C.G.A. § 9-6-23, mandamus did not lie to enforce purely private contract rights and the nominee's efforts to be qualified as a person to sit on the board of an electric membership corporation was a private right as board members were not public officers within the meaning of O.C.G.A. § 9-6-20. Rigby v. Boatright, 294 Ga. 253, 751 S.E.2d 851 (2013).

PART 12

DISSOLUTION OF ELECTRIC MEMBERSHIP CORPORATIONS

46-3-427. Execution of articles of dissolution; contents of articles of dissolution.

If voluntary dissolution proceedings under Code Section 46-3-420 have not been revoked, then when all debts, liabilities, and obligations of the electric membership corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the electric membership corporation have been distributed to its members and former members, or adequate provision has been made therefor, articles of dissolution shall be executed by the electric membership corporation as provided in Code Section 46-3-173, which articles shall set forth:

(1) The name of the electric membership corporation;

(2) That the Secretary of State has theretofore filed a statement of intent to dissolve the electric membership corporation and the date on which such statement was filed;

(3) That all debts, obligations, and liabilities of the electric membership corporation have been paid and discharged or that adequate provision has been made therefor;

(4) That all remaining property and assets of the electric membership corporation have been distributed among its members and former members in accordance with their respective rights and interests, or that adequate provision has been made therefor, or that such property and assets have been deposited with the Office of the State Treasurer as provided in Code Section 46-3-438; and

(5) That there are no actions pending against the electric membership corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending action. (Code 1933, § 34C-1208, enacted by Ga. L. 1981, p. 1587, § 1; Ga. L. 2008, p. 230, § 2/SB 175; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2008 amendment, effective July 1, 2008, substituted "Office of Treasury and Fiscal Services" for "Department of Administrative Services" in paragraph (4).

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" near the end of paragraph (4).

46-3-436. Entry of decree of involuntary dissolution; time of cessation of existence of electric membership corporation.

In proceedings to liquidate the assets and business of an electric membership corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the electric membership corporation have been paid and discharged, or adequate provision has been made therefor, and all of its remaining property and assets distributed to its members or former members, or adequate provision has been made therefor, or such property and assets have been deposited with the Office of the State Treasurer as provided in Code Section 46-3-438, or if its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations and all of the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the electric membership corporation. Upon the filing of the decree with the clerk of the court, the existence of the electric membership corporation shall cease. (Code 1933, § 34C-1217, enacted by Ga. L. 1981, p. 1587, § 1; Ga. L. 2008, p. 230, § 2/SB 175; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2008 amendment, effective July 1, 2008, substituted "Office of Treasury and Fiscal Services" for "Department of Administrative Services" in the middle of the first sentence.

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" in the middle of the first sentence.

46-3-438. Deposit with Office of the State Treasurer of amount due unknown, disabled, or unlocatable creditors or members; disposition of unclaimed amounts; time limitation.

Upon the voluntary or involuntary dissolution of an electric membership corporation, the portion of the assets distributable to a creditor or member who is unknown or cannot be found, or who is under disability and has no known representative legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Office of the State Treasurer and shall be paid over to such creditor or member or to his legal representative upon proof satisfactory to the Office of the State Treasurer of his right thereto. After the Office of the State Treasurer has held the unclaimed cash for six months, the Office of the State Treasurer shall pay such cash to the Board of Regents of the University System of Georgia, to be held without liability for profit or interest until a claim for such cash shall be filed with the Office of the State Treasurer by the parties entitled thereto. No such claim shall be made more than six years after such cash is deposited with the Office of the State Treasurer. (Code 1933, § 34C-1219, enacted by Ga. L. 1981, p.

1587, § 1; Ga. L. 2008, p. 230, § 2/SB 175; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2008 amendment, effective July 1, 2008, substituted "Office of Treasury and Fiscal Services" for "Department of Administrative Services" throughout this Code section.

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" six times throughout this Code section.

CHAPTER 4

DISTRIBUTION, STORAGE, AND SALE OF GAS

Article 2

Intrastate Pipelines and Distribution Systems

Sec.

Article 5

Natural Gas Competition and Deregulation

ARTICLE 2

INTRASTATE PIPELINES AND DISTRIBUTION SYSTEMS

46-4-28. Suspension, revocation, alteration, or amendment of certificates by commission.

(a) At any time after notice and opportunity to be heard, and for reasonable cause, the commission may suspend, revoke, alter, or amend any certificate issued under this article if it appears that the holder of the certificate has willfully violated or refused to observe any of the lawful and reasonable orders, rules, or regulations prescribed by the commission or any other law of this state regulating these pipeline or distribution systems, or if in the opinion of the commission the holder of the certificate is not furnishing adequate service, or if the continu-

ance of the certificate in its original form is incompatible with the public interest.

(a.1) Any certificate issued under this article shall be revoked or amended by the commission upon application to the commission by a person to provide natural gas service to a specified end-use customer, property owner, or developer who has requested natural gas service if the holder of the certificate has failed to begin construction or operation of any pipeline, or distribution system, or any extension thereof, in substantially all of the territory covered by such certificate. Once a person has filed such an application, the portion of the certificate of the territory for which the applicant is seeking to provide natural gas service to a specified end-use customer, property owner, or developer shall be deemed revoked or amended. The commission shall determine whether the applicant shall be entitled to a certificate for the territory that has been excluded from the certificate by revocation or amendment, whether such territory should be re-issued to the person who held the certificate at the time of the application, or whether such territory shall be deemed uncertificated. The commission shall make such determination within 90 days of the application and shall consider, in addition to the factors set forth in subsection (a) of Code Section 46-4-25, whether the applicant can offer service in a timely manner, and such other factors the commission deems in the public interest. The commission in determining whether to reissue a certificate to the person who held the certificate at the time of the application shall consider the length of time the certificate was held without service being provided. The newly certificated area shall be designed by the commission to serve the customers, property owners, or developers in question while ensuring a boundary with safety and public welfare as the focus.

(b) If and when the commission undertakes to revoke or modify any certificate on the ground that conditions are such as not to justify the number of certificates which have been granted within the territory involved, preference shall be given to certificates in order of the time of their issuance, so that those which have been issued later in time shall, other things being equal, be canceled rather than those issued earlier in time. (Ga. L. 1956, p. 104, § 9; Ga. L. 2007, p. 676, § 1/HB 587.)

The 2007 amendment, effective May 29, 2007, added subsection (a.1).

Editor's notes. — Ga. L. 2007, p. 676, § 2, not codified by the General Assembly, provides that this Act shall apply to all certificates in effect or applied for on or after May 29, 2007.

ARTICLE 3

UNDERGROUND STORAGE OF GAS

46-4-51. Definitions.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 19B Am. Jur. Pleading and Practice Forms, Pipelines, § 13.

ARTICLE 5

NATURAL GAS COMPETITION AND DEREGULATION

46-4-150. Short title.

JUDICIAL DECISIONS

Voluntary payment doctrine not applicable. — Trial court erred by dismissing a class action complaint under O.C.G.A. § 9-11-12(b)(6) for failure to state a cause of action in a suit brought by customers against an energy company seeking recovery of overpayments as the voluntary payment doctrine did not apply to bar the action. Ellison v. Southstar Energy Servs., LLC, 298 Ga. App. 170, 679 S.E.2d 750 (2009), aff'd, 286 Ga. 709, 691 S.E.2d 203 (2010).

46-4-151. Legislative findings and intent; bill of rights for consumers.

JUDICIAL DECISIONS

Voluntary payment doctrine not a defense. — Trial court erred in dismissing natural gas customers' class action alleging that a provider intentionally and deceptively overcharged the customers based on the voluntary payment doctrine. O.C.G.A. § 46-4-160.5, which specifically authorized a private right of action for damages for the customers, prevailed over O.C.G.A. § 13-1-13, the general statute setting forth the voluntary payment doctrine. Southstar Energy Servs., LLC v. Ellison, 286 Ga. 709, 691 S.E.2d 203 (2010).

Takings clause not violated. — Application of the true up process to the shortfall caused by the bankruptcy of a natural gas limited liability company (LLC) did not violate the takings clauses of U.S. Const., amend. V or Ga. Const. 1983, Art. I, Sec. III, Para. I because after the true up process had operated as intended, and after the fact, a marketer sought to obtain from the government amounts representing the marketer's commercial losses on gas delivered to the LLC's customers, and that was merely a "consequential" loss to the marketer. MXenergy Inc. v. Ga. PSC, 310 Ga. App. 630, 714 S.E.2d 132 (2011).

Allocation of universal service fund to shortfall. — Some evidence supported the superior court's conclusion that the Georgia Public Service Commission's decision to allocate a portion of the universal service fund to the shortfall of a natural gas limited liability company (LLC) was a regulatory business issue and a question of regulatory policy because evidence was presented that, in the context of its duty to protect natural gas consumers under the Natural Gas Competition and Deregula-

tion Act, O.C.G.A. § 46-4-151(a)(4), the Commission intended to moderate the increase in costs resulting from the LLC's inability to supply its customers, to encourage marketers to "be diligent" in addressing business risks, and to prevent the affected marketers from passing on to their customers all the costs of making up the LLC's shortfall. MXenergy Inc. v. Ga. PSC, 310 Ga. App. 630, 714 S.E.2d 132 (2011).

Cited in Ellison v. Southstar Energy Servs., LLC, 298 Ga. App. 170, 679 S.E.2d 750 (2009).

46-4-152. Definitions.

As used in this article, the term:

(1) "Adequate market conditions" means the existence of market conditions in relation to distribution service within a particular delivery group that have been determined pursuant to subsection (b) of Code Section 46-4-156 to warrant customer assignment.

(2) "Affiliate" means another person which controls, is controlled by, or is under common control with such person.

(3) "Ancillary service" means a service that is ancillary to the receipt or delivery of natural gas, including without limitation storage, balancing, peaking, and customer services.

(4) "Commodity sales service" means the sale of natural gas exclusive of any distribution or ancillary service.

(4.1) "Consumer" means a retail customer of commodity sales service or of firm distribution service who uses such service or services primarily for personal, family, or household purposes.

(5) "Control" includes without limitation the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a person. A voting interest of 10 percent or more creates a rebuttable presumption of control. A voting interest of 25 percent or more is deemed to constitute control. The term control includes the terms controlling, controlled by, and under control with.

(5.1) "Cramming" means billing for goods or services not requested or authorized by a consumer.

(6) "Customer assignment" means the process described in subsection (e) of Code Section 46-4-156 whereby retail customers within a particular distribution group who are not under contract for distribution service from a marketer are randomly assigned to certificated marketers.

(7) "Customer service" means a function related to serving a retail customer including without limitation billing, meter reading, turn-on service, and turn-off service. Notwithstanding any provision of law to the contrary, any person may perform one or more customer services

without first becoming certificated in accordance with Code Section 46-4-153; provided, however, that such service may only be performed in compliance with all state and federal laws pertaining to the safety of natural gas pipelines and distribution systems and any other applicable safety standards.

(8) "Delivery group" means a set of individual delivery points on one or more interstate pipeline suppliers to a gas company that may be aggregated and utilized for the distribution of gas to a particular set of retail customers.

(9) "Distribution service" means the delivery of natural gas by and through the intrastate instrumentalities and facilities of a gas company or of a marketer certificated pursuant to Code Section 46-4-153, regardless of the party having title to the natural gas.

(10) "Electing distribution company" means a gas company which elects to become subject to the provisions of this article and satisfies the requirements of Code Section 46-4-154.

(10.1) "Electric membership corporation" or "EMC" means any person defined in paragraph (3) or (5) of Code Section 46-3-171.

(10.2) "Electric utility" means any electric power company subject to the rate regulation of the commission in accordance with Code Sections 46-2-20 and 46-2-21.

(10.3) "Electricity activities" means all activities associated with the generation, transportation, marketing, and distribution of electricity.

(10.4) "EMC gas affiliate" means a separately organized person, the majority interest of which is owned or held by or, with respect to a cooperative, managed by one or more cooperatives or electric membership corporations and which applies to the commission for a certificate of authority pursuant to Code Section 46-4-153.

(11) "Firm" means a type of distribution service which ordinarily is not subject to interruption or curtailment.

(11.1) "Gas activities" means all activities associated with the transportation, marketing, and distribution of natural gas conducted by a person certificated pursuant to Code Section 46-4-153. Such term shall not mean the production, transportation, marketing, or distribution of liquefied petroleum gas.

(12) "Interruptible" means a type of distribution service which is subject to interruption or curtailment.

(12.1) "Low-income residential consumer" means any person who meets the definition of a person who is qualified for the Low Income

Home Energy Assistance Program, as promulgated by the Department of Human Services, pursuant to Code Section 46-1-5.

(12.2) "Majority interest" means the ownership of greater than 50 percent of:

(A) The partnership interests in a general or limited partnership;

(B) The membership interests of a limited liability company; or

(C) The stock in a for profit corporation which entitles the shareholder to vote and share in common or preferred dividends.

(13) "Marketer" means any person certificated by the commission to provide commodity sales service or distribution services pursuant to Code Section 46-4-153 and ancillary services incident thereto.

(14) "Person" means any corporation, whether public or private; company; individual; firm; partnership; or association, including a cooperative or an electric membership corporation.

(14.1) "Regulated gas service" means gas service provided by a regulated provider of natural gas.

(14.2) "Regulated provider of natural gas" means the entity selected by the commission to provide to consumers natural gas commodity service and ancillary services incident thereto in accordance with Code Section 46-4-166.

(15) "Retail customer" or "retail purchaser" means a person who purchases commodity sales service or distribution service and such purchase is not for the purpose of resale.

(15.1) "Slamming" means changing or causing a change of a consumer's service from one marketer or provider to another marketer or provider without request or authorization from the consumer.

(16) "Straight fixed variable" means a rate form in which the fixed costs of providing distribution service are recovered through one or more fixed components and the variable costs are recovered through one or more variable components.

(17) "Winter heating season" means the calendar days from October 1 of one year through March 31, inclusive, of the following year. (Code 1981, § 46-4-152, enacted by Ga. L. 1997, p. 798, § 4; Ga. L. 2002, p. 475, § 7; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" in paragraph (12.1).

JUDICIAL DECISIONS

Cited in Ellison v. Southstar Energy Servs., LLC, 298 Ga. App. 170, 679 S.E.2d 750 (2009).

46-4-154. Notice of election; unbundling; rates; application requirements; surcharge on interruptibles.

(a) A gas company may elect to become subject to the provisions of this article by filing a notice of election with the commission and by filing an application to establish just and reasonable rates, including separate rates for unbundled services. Pursuant to such application, the commission shall:

(1) Maintain rates for interruptible distribution service at the levels set forth in the rate schedules approved by the commission and in effect on the day the gas company files a notice of election as provided for in this Code section;

(2) After notice and hearing, establish rates for firm distribution service using a reasonable method of rate design, which may, at the commission's discretion, include a straight fixed variable method of rate design; provided, however, that a consumer shall not be required to pay a fee for distribution service during any billing period when the consumer's meter is turned off; and provided, further, that the method of rate design selected by the commission shall provide for recovery of the revenue requirements of the electing distribution company;

(3) Establish separate rates and charges, which may be based on market value, for each type of ancillary service which is classified separately;

(4) Provide for the recovery in rates of those costs which the commission determines are prudently incurred and used and useful in providing utility service; and

(5) Provide for recovery of costs found by the commission to be stranded and necessary to provide a reasonable return, provided that only prudently incurred stranded costs that cannot be mitigated may be recovered.

(b) In any proceeding before the commission to establish rates as provided in subsection (a) of this Code section, the commission shall prescribe rates for the services and cost recovery purposes specified in paragraphs (2), (3), (4), and (5) of subsection (a) of this Code section at levels which are designed to recover the costs of service of the electing distribution company as established by the commission in such proceeding. In such proceeding, the commission shall also prescribe a

mechanism by which 95 percent of the revenues to the electing distribution company from rates for interruptible distribution service shall be credited to the universal service fund established for that electing distribution company pursuant to Code Section 46-4-161. Each electing distribution company is authorized to retain for the benefit of its shareholders or owners 5 percent of the revenues the electing distribution company received from rates for interruptible service. Each electing distribution company which retains 5 percent of such revenues shall make a report to the commission annually describing the benefits resulting to firm retail customers from interruptible distribution service revenues.

(c) In addition to any other applicable filing requirements, any such application by a gas company shall include the following:

(1) An identification of each component of natural gas service, including but not limited to commodity sales service, distribution service, and ancillary services, which are to be unbundled and offered under separate rates, together with the total costs to provide each such service by the electing distribution company including a return on investment;

(2) Provisions for offering each unbundled service on an equal access, nondiscriminatory basis;

(3) A description of the method by which the electing distribution company proposes to allocate its intrastate capacity for firm distribution service to a marketer based upon the peak requirements of the firm retail customers served by the marketer;

(4) A description of the method by which the electing distribution company proposes to allocate its rights to interstate pipeline and underground storage to a marketer based upon the peak requirements of the firm retail customers served by the marketer; and

(5) A plan for establishing and operating an electronic bulletin board by which the electing distribution company will provide marketers with equal and timely access to information relevant to the availability of firm distribution service.

(d) Notwithstanding any other provision of this title, the commission shall hold a hearing regarding an application filed pursuant to this Code section and may suspend the operation of the proposed schedules and defer the use of the proposed rates, charges, classifications, or services for a period of not longer than six months.

(e) The commission shall establish a surcharge on all customers receiving interruptible service over the electing distribution company's distribution system sufficient to ensure that such customers will pay an equitable share of the cost of the distribution system over which such

customers receive service. The commission is authorized to direct the electing distribution company or the marketers to collect such surcharge directly from the customers. Such surcharge shall be paid promptly upon receipt into the universal service fund. This surcharge shall not be applied to any hospital that has a medicare and Medicaid payor mix of at least 30 percent and has uncompensated writeoffs for the provision of charity, indigent, and free health care services of not less than 5 percent of such hospital's annual operating expenses based on the annual hospital surveys by the Department of Community Health. This surcharge shall not be applied to any institution or property enumerated in Code Section 50-16-3, or administered or regulated under authority granted by Code Section 42-2-5 or 49-4A-6 or by Chapter 9 of Title 50. (Code 1981, § 46-4-154, enacted by Ga. L. 1997, p. 798, § 4; Ga. L. 2002, p. 475, § 10; Ga. L. 2009, p. 453, § 1-51/HB 228.)

The 2009 amendment, effective July 1, 2009, deleted "the Division of Health Planning" following "hospital surveys by" in the next-to-last sentence of subsection (e).

46-4-155. Regulation of unbundled services; peaking service; customer services; interstate capacity assets.

(a) Except as otherwise provided by this article, an electing distribution company which offers firm distribution service remains subject to the jurisdiction of the commission under this title. Without limiting the generality of the foregoing, the commission shall have general supervision of such company pursuant to Code Section 46-2-20, and the rates of an electing distribution company for firm distribution service and the ancillary services which are subject to the rate jurisdiction of the commission shall be established in accordance with the provisions of this article and Code Section 46-2-23.1.

(b) An electing distribution company shall offer liquefied natural gas peaking service to marketers at rates and on terms approved by the commission, subject however to the following:

(1) If a marketer which is not affiliated with an electing distribution company obtains a peaking service in a delivery group from a person other than the electing distribution company, the rate for liquefied natural gas peaking service by the electing distribution company in such delivery group shall not be subject to approval by the commission but shall be capped at 120 percent of the rate for such service previously established by the commission; and

(2) If the commission determines pursuant to a filing by the electing distribution company or otherwise, and based upon the factors listed in subsection (c) of this Code section, that reasonably

available alternatives for such peaking services exist in the delivery group, the rate for such services in a delivery group shall not be subject to regulation by the commission and the plant and equipment of the electing distribution company which is used and useful for receiving gas for liquefaction, liquefying gas, storing liquefied natural gas, and re-gasifying liquefied natural gas, including the land upon which such plant and equipment is located, shall be removed from the rate base for rate-making purposes of the electing distribution company in an amount which is the lower of the fair market value or the depreciated book value of such facilities. In addition, the rates for firm distribution service of the electing distribution company shall be adjusted to eliminate any applicable recovery of the operation and maintenance expenses associated with such facilities and gas in storage in such facilities, as well as the return on investment attributable to the amount removed from the rate base. For purposes of such review and determination, the fact that such services have been obtained by a marketer which is not affiliated with the electing distribution company shall create a presumption that there are reasonably available alternatives for such peaking services in the delivery group.

(c) An electing distribution company shall offer each type of customer service to marketers at rates and on terms approved by the commission in accordance with this article and Code Section 46-2-23.1 until such time as the commission determines that marketers have reasonably available alternatives to purchasing such service from the electing distribution company. The commission shall make a separate determination for each type of service. In making such determinations, the commission shall consider the following factors:

(1) The number and size of alternative providers of the service;

(2) The extent to which the service is available from alternative providers in the relevant market;

(3) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive prices, terms, and conditions; and

(4) Other indicators of market power which may include market share, growth in market share, ease of entry, and the affiliation of providers of a service.

(d) For each delivery group for which the commission has not determined pursuant to Code Section 46-4-156 that adequate market conditions exist, and thus has not initiated customer assignment, an electing distribution company shall:

(1) Offer interruptible distribution service and balancing services at rates and on terms approved by the commission in accordance with

the provisions of this article and Code Section 46-2-23.1 to retail customers and marketers, subject to the rules, regulations, and general terms and conditions of the electing distribution company as approved by the commission;

(2) Offer firm distribution service at rates and on terms approved by the commission in accordance with the provisions of this article and Code Section 46-2-23.1 to retail customers and marketers, subject to the rules, regulations, and general terms and conditions of the electing distribution company as approved by the commission; and

(3) Offer in conjunction with such firm distribution service a commodity sales service; provided, however, that the rates for such commodity sales service shall be established pursuant to the provisions of Code Section 46-2-26.5, relating to the filing and adoption of a gas supply plan; and provided, further, that the rates for such commodity sales service shall not be subject to the provisions of Code Section 46-2-26.5 nor subject to the approval of the commission if at least five marketers, excluding any marketer which is an affiliate of the electing distribution company, have been granted certificates of authority to serve in the delivery group.

(e)(1) As used in this subsection, the term "interstate capacity assets" means interstate transportation and out-of-state gas storage capacity.

(2) If, pursuant to the provisions of this article, the rates for commodity sales service of an electing distribution company within a delivery group or groups become no longer subject to the approval of the commission nor to the provisions of Code Section 46-2-26.5, the electing distribution company nevertheless shall continue to be responsible for acquiring and contracting for the interstate capacity assets necessary for gas to be made available on its system, whether directly or by assignment to marketers, for firm distribution service to retail customers within such delivery group or groups unless determined otherwise by the commission in accordance with this subsection.

(3) At least every third year following the date when the rates for commodity sales service within a delivery group or groups become no longer subject to commission approval nor to the provisions of Code Section 46-2-26.5, the electing distribution company shall file, on or before August 1 of such year, a capacity supply plan which designates the array of available interstate capacity assets selected by the electing distribution company for the purpose of making gas available on its system for firm distribution service to retail customers in such delivery group or groups.

(4) Not less than ten days after any such filing by an electing distribution company, the commission shall conduct a public hearing on the filing. The electing distribution company's testimony shall be under oath and shall, with any corrections thereto, constitute the electing distribution company's affirmative case. At any hearing conducted pursuant to this subsection, the burden of proof to show that the proposed capacity supply plan is appropriate shall be upon the electing distribution company.

(5) Following such a hearing, the commission shall issue an order approving the capacity supply plan filed by the electing distribution company or adopting a capacity supply plan for the electing distribution company that the commission deems appropriate. Should the commission fail or refuse to issue an order by the ninetieth day after the electing distribution company's filing which either approves the capacity supply plan filed by the electing distribution company or adopts a different capacity supply plan for the electing distribution company, the capacity supply plan proposed by the electing distribution company shall thereupon be deemed approved by operation of law.

(6) Any capacity supply plan approved or adopted by the commission shall:

(A) Specify the range of the requirements to be supplied by interstate capacity assets;

(B) Describe the array of interstate capacity assets selected by the electing distribution company to meet such requirements;

(C) Describe the criteria of the electing distribution company for entering into contracts under such array of interstate capacity assets from time to time to meet such requirements; provided, however, that a capacity supply plan approved or adopted by the commission shall not prescribe the individual contracts to be executed by the electing distribution company in order to implement such plan; and

(D) Specify the portion of the interstate capacity assets which must be retained and utilized by the electing distribution company in order to manage and operate its system.

(7) When interstate capacity assets that are contained in a capacity supply plan approved or adopted by the commission are allocated by the electing distribution company to a marketer pursuant to the provisions of this article, all of the costs of the interstate capacity assets thus allocated shall be borne by such marketer.

(8) The provisions of law relating to parties, intervention, and discovery in proceedings before the commission shall apply with respect to proceedings under this subsection.

(9) All commission orders issued pursuant to this subsection shall contain the commission's findings of fact and conclusions of law upon which the commission's action is based. Any such order shall be deemed a final order subject to judicial review under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(10) Prior to the approval or adoption of a capacity supply plan pursuant to this subsection, the interstate capacity assets of the electing distribution company in the most current gas supply plan of such company approved or adopted by the commission pursuant to the provisions of Code Section 46-2-26.5 shall be treated as a capacity supply plan that is approved or adopted by the commission for purposes of this subsection.

(11) After a capacity supply plan has become effective pursuant to provisions of this subsection as a result of a proceeding before the commission, the commission shall retain jurisdiction of the proceeding for the purposes set forth in this subsection. Upon application of the affected electing distribution company or upon its own initiative, the commission may, after affording due notice and opportunity for hearing to the affected electing distribution company and the intervenors in the proceeding, amend the capacity supply plan of the affected electing distribution company. Any such amendment shall not adversely affect rights under any contract entered into pursuant to such plan without the consent of the parties to such contracts. If an amendment proceeding is initiated by the affected electing distribution company and the commission fails or refuses to issue an order by the ninetieth day after the electing distribution company's filing, the amended capacity supply plan proposed by the electing distribution company shall thereupon be deemed approved by operation of law.

(12) After an electing distribution company has no obligation to provide commodity sales service to retail customers pursuant to the provisions of Code Section 46-4-156 and upon the petition of any interested person and after notice and opportunity for hearing afforded to the electing distribution company, all parties to the most current proceeding establishing a capacity supply plan for such electing distribution company, all marketers who have been issued a certificate of authority pursuant to Code Section 46-4-153, and all owners or operators of interstate gas pipelines that are a part of said capacity supply plan, the commission may issue an order eliminating the responsibility of the electing distribution company for acquiring and contracting for interstate capacity assets necessary for gas to be made available on its system as well as the obligation of such electing distribution company to file any further capacity supply plans with the commission pursuant to the provisions of this subsection, if the commission determines that:

(A) Marketers can and will secure adequate and reliable interstate capacity assets necessary to make gas available on the system of the electing distribution company for service to firm retail customers;

(B) Adequate, reliable, and economical interstate capacity assets will not be diverted from use for service to retail customers in Georgia;

(C) There is a competitive, highly flexible, and reasonably accessible market for interstate capacity assets for service to retail customers in Georgia;

(D) Elimination of such responsibility on the part of the electing distribution company would not adversely affect competition for natural gas service to retail customers in Georgia; and

(E) Elimination of such responsibility on the part of the electing distribution company is otherwise in the public interest.

If the commission eliminates the responsibility of an electing distribution company for acquiring and contracting for interstate capacity assets and filing further capacity supply plans in accordance with this subsection, the commission shall annually review the assignment of interstate capacity assets.

(13) Notwithstanding any other provisions in this Code section to the contrary, no later than July 1, 2003, the commission shall, after notice afforded to the electing distribution company, all marketers who have been issued a certificate of authority in accordance with Code Section 46-4-153, and all owners or operators of interstate gas pipelines that are a part of said capacity supply plan, hold a hearing regarding a plan for assignment of interstate assets. After such hearing, the commission may adopt a plan for assignment of interstate capacity assets held by the electing distribution company, except for those interstate capacity assets reasonably required for balancing. If adopted, the plan shall provide for interstate capacity assets to be assigned to certificated marketers who desire assignment and who are qualified technically and financially to manage interstate capacity assets. Marketers who accept assignment of interstate capacity assets shall be required by the commission to use such assets primarily to serve retail customers in Georgia and shall be permitted to use such assets outside Georgia so long as the reliability of the system is not compromised. Thereafter, the commission shall annually review the assignment of interstate capacity assets.

(14) Any order eliminating the responsibility of the electing distribution company for acquiring and contracting for interstate capacity assets pursuant to paragraph (12) of this subsection and any plan for

assignment of interstate capacity assets pursuant to paragraph (13) of this subsection shall, at a minimum, ensure that:

(A) Shifts in market share are reflected in an orderly reassignment of interstate capacity assets;

(B) Marketers hold sufficient interstate capacity assets to meet the needs of retail customers;

(C) Before any such assignment is authorized, the assignee demonstrates to the commission that such assignment will result in financial benefits to firm retail customers;

(D) Before any marketer discontinues service in the Georgia market, it assigns its contractual rights for interstate capacity assets used to serve Georgia retail customers in a manner designated by the commission;

(E) In the event that the commission imposes temporary directives in accordance with Code Section 46-4-157, interstate capacity assets assigned to marketers are subject to reassignment by the commission to protect the interests of retail customers; and

(F) Any other requirement that the commission finds to be in the public interest is imposed upon assignees as a condition of the assignment of interstate capacity assets.

(15) After notice and an opportunity for hearing, the commission may authorize, subject to reasonable terms and conditions, an electing distribution company or its designee to utilize or monetize excess interstate capacity assets available to the electing distribution company. (Code 1981, § 46-4-155, enacted by Ga. L. 1997, p. 798, § 4; Ga. L. 2002, p. 475, § 11; Ga. L. 2015, p. 1088, § 37/SB 148.)

The 2015 amendment, effective July 1, 2015, in subsection (e), deleted "or the consumers' utility counsel division of the Governor's Office of Consumer Affairs" following "Upon application of the affected electing distribution company" near the beginning of the second sentence of paragraph (e)(11), deleted "the consumers' utility counsel division of the Governor's Office of Consumer Affairs," following "such electing distribution company," near the middle of the introductory language of paragraph (e)(12), and deleted "the consumers' utility counsel division of the Governor's Office of Consumer Affairs," following "after notice afforded to the electing distribution company," near the beginning of paragraph (e)(13).

46-4-158.2. Rules governing marketer's terms of service.

The commission shall by September 1, 2002, adopt rules governing a marketer's terms of service for natural gas consumers. Such rules shall provide, without limitation, that:

(1) Each retail natural gas marketer shall establish policies and procedures for handling billing disputes and requests for payment arrangements, which must be approved by the commission;

(2) A marketer's advertised prices shall reflect the prices or the pricing methodology in disclosure statements and billed prices and shall be presented in the standard pricing unit of the electing distribution company;

(3) The consumer shall have a right to contact the commission if he or she is not satisfied with the response of the marketer;

(4) Marketers shall provide all consumers with a three-day right of rescission following the receipt of the disclosure statement, which shall be provided to consumers at times specified in rules and regulations of the commission. Consumers may cancel an agreement in writing or electronically by contacting the marketer;

(5) Whenever a marketer offers a fixed term agreement and the expiration date of such agreement is approaching, or whenever a marketer proposes to change its terms of service under any type of agreement, the marketer shall provide written notification to the natural gas consumer, clearly explaining the consumer's options at that point, including, but not limited to, the option to seek another marketer;

(6) A marketer shall not charge cancellation fees to a low-income residential consumer seeking service for the first time from the regulated provider;

(7) Gas service to a consumer shall be disconnected only for failure to pay for service from the consumer's current marketer. A marketer may not request disconnection of service for nonpayment of a bill which was not sent to the consumer in a timely manner. Every marketer shall be required to offer at least one reasonable payment arrangement in writing to a consumer prior to requesting that such consumer be disconnected for failure to pay. Disconnection of service to a consumer is authorized no earlier than 15 days after a notice that service will be disconnected;

(8) Marketers shall be prohibited from sending estimated bills to natural gas consumers; provided, however, that when information from actual meter readings is not made available by the electing distribution company or any other party authorized to perform meter reading, marketers may send an estimated bill for not more than two consecutive months; and

(9) No marketer shall be authorized to prevent a consumer from obtaining distribution and commodity sales service from another

marketer or provider. (Code 1981, § 46-4-158.2, enacted by Ga. L. 2002, p. 475, § 15; Ga. L. 2015, p. 1088, § 38/SB 148.)

The 2015 amendment, effective July 1, 2015, in paragraph (3), deleted "and the consumers' utility counsel division of the Governor's Office of Consumer Affairs" following "contact the commission".

46-4-158.3. Adequate and accurate consumer information disclosure statements; bills.

The commission shall, by September 1, 2002, adopt rules and regulations requiring marketers which provide firm distribution service under this article to provide adequate and accurate consumer information to enable consumers to make informed choices regarding the purchase of natural gas services. Such rules shall provide, without limitation, that:

(1) A disclosure statement shall be provided to consumers in an understandable format that enables such consumers to compare prices and services on a uniform basis. Rules adopted by the commission shall provide when disclosure statements shall be provided to consumers. Such disclosure statements shall include, but shall not be limited to, the following:

(A) For fixed rate charges for natural gas service, a clear disclosure of the components of the fixed rate, the actual prices charged by the marketer, presented in a single standard pricing unit which includes any charges imposed by the marketer or its agent, so that the consumer can compare rates among marketers. This disclosure shall not include state and local sales taxes. The standard pricing disclosure unit must include all recurring monthly charges;

(B) For variable rate charges for natural gas service, a clear and understandable explanation of the factors that will cause the price to vary and how often the price can change, the current price, and the ceiling price, if any, so that the consumer can compare rates among marketers. The current price and ceiling price, if applicable, shall be presented in a single standard pricing unit which includes any charges imposed by the marketer or its agent. This disclosure shall not include state and local sales taxes. The standard pricing disclosure unit must include all recurring monthly charges;

(C) A statement that the standard unit price does not include state and local taxes or charges imposed by the electing distribution company;

(D) The length of the agreement, including the starting date and expiration date, if applicable;

(E) The billing interval, the method by which monthly charges imposed by the electing distribution company will be billed to the consumer in the event the consumer commences or terminates service with the marketer during the billing interval, and any late payment, cancellation, or reconnection fees;

(F) The marketer's budget billing, payment, credit, deposit, cancellation, collection, and reconnection policies and procedures;

(G) How to contact the marketer for information or complaints;

(H) A statement of the natural gas consumer's right to contact the commission if he or she is not satisfied with the response of the marketer, including the local and toll-free telephone numbers of these agencies;

(I) The division name and telephone number for information regarding heating assistance administered by the Department of Human Services;

(J) The following statement:

"A consumer shall have a three-day right of rescission following the receipt of this disclosure at the time of initiating service or when informed of a change in terms or conditions. You, the consumer, may cancel in writing or electronically by contacting the marketer.";

(K) The following statement:

"If you have a fixed term agreement with us and it is approaching the expiration date, or whenever we propose to change our terms of service in any type of agreement, you will receive written notification from us prior to the date of expiration of or change to the agreement. We will explain your options to you in this advance notification.";

(L) A statement setting forth the requirements of paragraphs (6) through (9) of Code Section 46-4-158.2; and

(M) A statement that deposits shall not exceed $150.00; and

(2) Natural gas consumers' bills shall be accurate and understandable and shall contain sufficient information for a consumer to compute and compare the total cost of competitive retail natural gas services. Such bills shall include, but not be limited to, the following:

(A) The consumer's name, billing address, service address, and natural gas company account number;

(B) The dates of service covered by the bill, an itemization of each type of competitive natural gas service covered by the bill, any

related billing components, the charge for each type of natural gas service, and any other information the consumer would need to recalculate the bill for accuracy;

(C) The applicable billing determinants, including beginning meter reading, ending meter reading, multipliers, and any other consumption adjustments;

(D) The amount billed for the current period, any unpaid amounts due from previous periods, any payments or credits applied to the consumer's account during the current period, any late payment charges or gross and net charges, if applicable, and the total amount due and payable;

(E) The due date for payment to keep the account current;

(F) The current balance of the account, if the natural gas consumer is billed according to a budget plan;

(G) Options and instructions on how the natural gas consumer can make a payment;

(H) A toll-free or local telephone number and address for consumer billing questions or complaints for any retail natural gas company whose charges appear on the bill;

(I) The applicable electing distribution company's 24 hour local or toll-free telephone number for reporting service emergencies; and

(J) An explanation of any codes and abbreviations used. (Code 1981, § 46-4-158.3, enacted by Ga. L. 2002, p. 475, § 15; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2015, p. 1088, § 39/SB 148.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" in subparagraph (1)(I).

The 2015 amendment, effective July 1, 2015, in subparagraph (1)(H), deleted "and the consumers' utility counsel division of the Governor's Office of Consumer Affairs" following "contact the commission".

46-4-160. Commission's authority over certificated marketers; access to records; investigations and hearings; price summary; billing; violations; slamming.

(a) With respect to a marketer certificated pursuant to Code Section 46-4-153, the commission shall have authority to:

(1) Adopt reasonable rules and regulations governing the certification of a marketer;

(2) Grant, modify, impose conditions upon, or revoke a certificate;

(3) Adopt reasonable rules governing service quality. In promulgating consumer protection rules under this article, the commission shall, to the extent practicable, provide for rules with a self-executing mechanism to resolve such complaints in a timely manner. Such consumer protection rules shall encourage marketers to resolve complaints without recourse to the commission and shall expedite the handling of those complaints that do require action by the commission by providing for a minimum payment of $100.00 to the consumer, plus penalties and fines as determined by the commission, for violations of such rules;

(4) Resolve complaints against a marketer regarding that marketer's service;

(5) Adopt reasonable rules and regulations relating to billing practices of marketers and information required on customers' bills. The commission shall require at a minimum that bills specify the gas consumption amount, price per therm, distribution charges, and any service charges. The commission shall prescribe performance standards for marketer billing relating to accuracy and timeliness of customer bills;

(6) Adopt reasonable rules and regulations relating to minimum resources which marketers are required to have in this state for customer service purposes. The rules and regulations shall require a marketer to have and maintain the ability to process cash payments from customers in this state. The rules and regulations shall provide procedures relating to the handling and disposition of customer complaints; and

(7) Adopt reasonable rules and regulations requiring marketers to provide notification to retail customers of or include with customer bills information relating to where customers may obtain pricing information relative to gas marketers.

(b) Prior to the determination by the commission pursuant to Code Section 46-4-156 that adequate market conditions exist within a delivery group, each marketer must separately state on its bills to retail customers within the delivery group the charges for firm distribution service and for commodity sales.

(c) Except as otherwise provided by this article, the price at which a marketer sells gas shall not be regulated by the commission.

(d) The commission shall have access to the books and records of marketers as may be necessary to ensure compliance with the provisions of this article and with the commission's rules and regulations promulgated under this article.

(e) Except as otherwise provided in this article, certification of a person as a marketer by the commission pursuant to Code Section

46-4-153 does not subject the person to the jurisdiction of the commission under this title, including without limitation the provisions of Article 2 of Chapter 2 of this title.

(f) The provisions of Article 3 of Chapter 2 of this title shall apply to an investigation or hearing regarding a marketer. The provisions of Articles 4 and 5 of Chapter 2 of this title shall apply to a marketer.

(g) The commission, subject to receiving state funds for such purpose, is required to have published at least quarterly in newspapers throughout the state a summary of the price per therm and any other amounts charged to retail customers by each marketer operating in this state and any additional information which the commission deems appropriate to assist customers in making decisions regarding choice of a marketer. In addition, the commission shall make such information available to Georgia Public Telecommunications (GPTV) under the jurisdiction of the Georgia Public Telecommunications Commission which will provide such information to the general public at a designated time at least once a month.

(h) A marketer shall render a bill to retail customers for services within 30 days of the date following the monthly meter reading. A marketer's bill shall utilize the results of the actual meter reading subject to paragraph (8) of Code Section 46-4-158.2. The price for natural gas billed to a natural gas consumer shall not exceed the marketer's published price effective at the beginning of the consumer's billing cycle. A marketer shall allow the natural gas consumer a reasonable period of time to pay the bill from the date the consumer receives the bill, prior to the application of any late fees or penalties. Marketers shall not impose unreasonable late fees or penalties and in no event shall any such fees or penalties exceed $10.00 or 1.5 percent of the past due balance, whichever is greater.

(i) Any marketer which willfully violates any provision of this Code section or any duly promulgated rules or regulations issued under this Code section, including but not limited to rules relating to false billing, or which fails, neglects, or refuses to comply with any order of the commission after notice thereof shall be liable for any penalties authorized under Code Section 46-2-91.

(j) As used in this subsection, the phrase "terms and conditions" does not include price. At least 30 days prior to the effective date of any changes in the terms and conditions for service authorized by the marketer's certificate of authority, a marketer shall file such changes with the commission. Such changes to the terms and conditions of service shall go into effect on the effective date proposed by the marketer; provided, however, that the commission shall be authorized to suspend the effective date of the proposed changes for up to 90 days

if it appears to the commission that the proposed terms and conditions are unconscionable or are unfair, deceptive, misleading, or confusing to consumers. If the commission does not issue a final decision on the proposed terms and conditions of service within the 90 day suspension period, the proposed changes shall be deemed approved.

(k) Any consumer determined by the commission to be the victim of slamming shall be able to switch back to his or her desired marketer without any charge. No marketer responsible for slamming a consumer shall be entitled to any remuneration for services provided to that customer, and any refund owed to such a consumer by the marketer who switched the consumer without his or her consent shall be paid within 30 days of the date the commission determined the consumer was a victim of slamming. No marketer responsible for slamming a consumer who is determined to be a victim of slamming shall report to a credit reporting agency any moneys owed by such a consumer to such marketer; any marketer who violates the prohibition set out in this sentence shall be required by the commission to pay such a consumer $1,000.00 for each such prohibited report. (Code 1981, § 46-4-160, enacted by Ga. L. 1997, p. 798, § 4; Ga. L. 2001, p. 1084, § 3; Ga. L. 2001, p. 1206, § 3; Ga. L. 2002, p. 475, § 16; Ga. L. 2015, p. 1088, § 40/SB 148.)

The 2015 amendment, effective July 1, 2015, deleted "and the consumers' utility counsel division of the Governor's Office of Consumer Affairs" following "The commission" near the beginning of subsection (d).

JUDICIAL DECISIONS

Cited in Ellison v. Southstar Energy Servs., LLC, 298 Ga. App. 170, 679 S.E.2d 750 (2009).

46-4-160.2. Requirements of marketer for billing errors; requiring written request for credit or refund prohibited.

JUDICIAL DECISIONS

Construction of statute. — Class representatives motion for reconsideration on the ground that O.C.G.A. § 46-4-160.2 barred the voluntary payment doctrine was denied because although the class representatives urged the court to adopt an expansive interpretation of the term "billing errors", contrary to the class representatives' characterization, that sort of error would not be a mistake of fact, but a difference of interpretation in what constituted a "billing error" under the statute. Although the scope of "billing errors" was arguable, differing interpretations of that term did not constitute grounds on which to vacate the order of dismissal. Robbins v. Scana Energy Mktg., No. 1:08-CV-640-BBM, 2008 U.S. Dist. LEXIS 113715 (N.D. Ga. July 30, 2008).

Applicability. — Georgia Supreme Court's decisions under the Georgia Territorial Electric Service Act (GTESA), in cases involving under-billing by electricity providers, are not necessarily binding

with regard to billing by other utility companies however, there is no case law suggesting that natural gas providers warrant greater protection than that afforded to electric vendors under the GTESA; with regard to electric provider under-billing cases, the Georgia Supreme Court has not limited the assertion of affirmative defenses to "innocent" electric consumers only. City of Lawrenceville v. Ricoh Elecs., Inc., 370 F. Supp. 2d 1328 (N.D. Ga. 2005).

Corporation was granted summary judgment with regard to a city's claims for additional payment for natural gas that it had provided to the corporation's manufacturing plant: (1) the city failed to present any evidence showing that it should not be bound by its account as originally billed, as the billing errors resulted from its own negligence; (2) although it was not clear that the Georgia Supreme Court's decisions under the Georgia Territorial Electric Service Act (GTESA), O.C.G.A. § 46-3-1 et seq., were necessarily applicable to cases involving non-electric utility providers, there was no case law suggesting that natural gas providers warranted greater protection than that afforded to electric vendors under the GTESA; and (3) the corporation did not have to establish that it was an "innocent consumer" in order to assert affirmative defenses in the suit. City of Lawrenceville v. Ricoh Elecs., Inc., 370 F. Supp. 2d 1328 (N.D. Ga. 2005).

Cited in Ellison v. Southstar Energy Servs., LLC, 298 Ga. App. 170, 679 S.E.2d 750 (2009).

46-4-160.4. Natural Gas Consumer Education Advisory Board; membership; responsibilities.

Reserved. Repealed by Ga. L. 2008, p. 1015, § 9, effective May 14, 2008.

Editor's notes. — This Code section was based on Code 1981, § 46-4-160.4, enacted by Ga. L. 2002, p. 475, § 18.

46-4-160.5. Retail customer recovery for violations.

(a) Any retail customer who is damaged by a marketer's violation of any provision of Code Section 46-4-160, any duly promulgated rules or regulations issued under such Code section, or any commission order shall be entitled to maintain a civil action and shall be entitled to recover actual damages sustained by the retail customer, as well as incidental damages, consequential damages, reasonable attorney's fees, and court costs.

(b) Any violation of Code Section 46-4-160 or any duly promulgated rules or regulations issued under such Code section is declared to be a violation of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975." Any remedy available under such part shall be available to any retail customer and any action by the Attorney General that such part authorizes for a violation of such part shall be authorized for violation of Code Section 46-4-160 or any duly promulgated rules or regulations issued under such Code section. This subsection shall not be construed to provide that other violations of this article or rules promulgated under this article are not violations of such part.

(c) The provisions of this Code section shall apply to violations of subsections (g) and (h) of Code Section 46-4-156, Code Sections 46-4-158.2, 46-4-160.1, and 46-4-160.2, and substantial violations of Code Section 46-4-158.3. (Code 1981, § 46-4-160.5, enacted by Ga. L. 2002, p. 475, § 18; Ga. L. 2004, p. 631, § 46; Ga. L. 2015, p. 1088, § 41/SB 148.)

The 2015 amendment, effective July 1, 2015, substituted "Attorney General" for "administrator" in the second sentence of subsection (b).

JUDICIAL DECISIONS

Recovery of overpayments made to energy company. — Trial court erred by dismissing a class action complaint under O.C.G.A. § 9-11-12(b)(6) for failure to state a cause of action in a suit brought by customers against an energy company seeking recovery of overpayments as the voluntary payment doctrine did not apply to bar the action. Ellison v. Southstar Energy Servs., LLC, 298 Ga. App. 170, 679 S.E.2d 750 (2009), aff'd, 286 Ga. 709, 691 S.E.2d 203 (2010).

Voluntary payment doctrine not a defense. — Trial court erred in dismissing natural gas customers' class action alleging that a provider intentionally and deceptively overcharged the customers based on the voluntary payment doctrine. O.C.G.A. § 46-4-160.5, which specifically authorized a private right of action for damages for the customers, prevailed over O.C.G.A. § 13-1-13, the general statute setting forth the voluntary payment doctrine. Southstar Energy Servs., LLC v. Ellison, 286 Ga. 709, 691 S.E.2d 203 (2010).

46-4-161. Universal service fund.

(a) The commission shall create for each electing distribution company a universal service fund for the purpose of:

(1) Assuring that gas is available for sale by marketers to firm retail customers within the territory certificated to each such marketer;

(2) Enabling the electing distribution company to expand its facilities and service in the public interest. Such expansion of facilities may include a natural gas fueling infrastructure for motor vehicles at the discretion of the commission; and

(3) Assisting low-income residential consumers in times of emergency as determined by the commission, and consumers of the regulated provider of natural gas in accordance with Code Section 46-4-166.

(b) The fund shall be administered by the commission under rules to be promulgated by the commission in accordance with the provisions of this Code section. Prior to the beginning of each fiscal year of the electing distribution company, the commission shall determine the amount of the fund appropriate for such fiscal year, which amount shall

not exceed $25 million for that fiscal year. In making such determination, the commission shall consider the following:

(1) The amount required to provide sufficient contributions in aid of construction to permit the electing distribution company to extend and expand its facilities from time to time as the commission deems to be in the public interest; and

(2) The amount required to assist low-income residential consumers in times of emergency as determined by the commission and consumers of the regulated provider of natural gas in accordance with Code Section 46-4-166.

(c) The fund shall be created and maintained from time to time from the following sources:

(1) Rate refunds to the electing distribution company from its interstate pipeline suppliers;

(2) Any earnings allocable to ratepayers under performance based rates of the electing distribution company authorized by this article;

(3) A surcharge to the rates for firm distribution service of the electing distribution company authorized for such purpose by the commission from time to time;

(4) Surcharges on customers receiving interruptible service over the electing distribution company's distribution system imposed by the commission in accordance with Code Section 46-4-154;

(5) Refunds of deposits required by marketers as a condition for service, if such refunds have not been delivered to or claimed by the consumer within two years;

(6) Funds deposited by marketers in accordance with Code Section 46-4-160.3;

(7) The proceeds from the sale or lease of facilities financed from the universal service fund; and

(8) Any other payments to the fund as provided by law or by order of the commission.

(d) Any amounts remaining in such fund at the end of a fiscal year in excess of $3 million shall be available for refund to retail customers in such manner as the commission shall deem equitable. The balance at fiscal year end, whether positive or negative, after such refund, if any, shall become the initial balance of the fund for the ensuing fiscal year.

(e) Moneys in the fund shall be deposited in a separate, interest-bearing escrow account maintained by the electing distribution company at any state or federally chartered bank, trust company, or

savings and loan association located in this state. Upon application to the commission, the commission shall order the distribution of an appropriate portion of such moneys on a quarterly basis and in accordance with the provisions of this Code section. Interest earned on moneys in the fund shall accrue to the benefit of the fund.

(f) Distributions to the regulated provider shall be made in accordance with Code Section 46-4-166.

(g)(1) In determining whether to grant the application of an electing distribution company for a distribution from the fund in whole or in part, the commission shall consider:

(A) The capital budget of the electing distribution company for the relevant fiscal year;

(B) The estimated total overall applicable cost of the proposed extension, including construction costs, financing costs, working capital requirements, and engineering and contracting fees, as well as all other costs that are necessary and reasonable;

(C) The projected initial service date of the new facilities, the estimated revenues to the electing distribution company during the first five fiscal years following the initial service date, and the estimated rate of return to the electing distribution company produced by such revenues during each such fiscal year;

(D) The amount of the contribution in aid of construction required for the revenues from the proposed new facility to produce a just and reasonable return to the electing distribution company; and

(E) Whether the proposed new facility is in the public interest.

(2) In no event shall the distribution to an electing distribution company from the fund for facilities and service expansion during any fiscal year exceed 5 percent of the capital budget of such company for such fiscal year.

(3) Any investment in new facilities financed from the universal service fund shall be accounted for as a contribution in aid of construction.

(h) In no event shall an electing distribution company, who receives a distribution from the fund, sell or lease any facilities financed by the fund to an affiliate for less than the higher of the net book value or fair market value of such facility without approval by the commission. (Code 1981, § 46-4-161, enacted by Ga. L. 1997, p. 798, § 4; Ga. L. 2001, p. 1084, § 5; Ga. L. 2001, p. 1206, § 5; Ga. L. 2002, p. 475, § 19; Ga. L. 2011, p. 475, §§ 2-4/SB 108.)

The 2011 amendment, effective May 11, 2011, inserted ". Such expansion of facilities may include a natural gas fueling infrastructure for motor vehicles at the discretion of the commission" in paragraph (a)(2); in subsection (c), deleted "and" at the end of paragraph (c)(6), added present paragraph (c)(7), redesignated former paragraph (c)(7) as paragraph (c)(8), and, in paragraph (c)(8), inserted "as" and added "or by order of the commission" at the end; and added subsection (h).

Editor's notes. — Ga. L. 2011, p. 475, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Energy Independence and Rate Payer Protection Act.'"

JUDICIAL DECISIONS

Allocation of universal service fund to shortfall. — Some evidence supported the superior court's conclusion that the Georgia Public Service Commission's decision to allocate a portion of the universal service fund to the shortfall of a natural gas limited liability company (LLC) was a regulatory business issue and a question of regulatory policy because evidence was presented that, in the context of its duty to protect natural gas consumers under the Natural Gas Competition and Deregulation Act, O.C.G.A. § 46-4-151(a)(4), the Commission intended to moderate the increase in costs resulting from the LLC's inability to supply its customers, to encourage marketers to "be diligent" in addressing business risks, and to prevent the affected marketers from passing on to their customers all the costs of making up the LLC's shortfall. MXenergy Inc. v. Ga. PSC, 310 Ga. App. 630, 714 S.E.2d 132 (2011).

CHAPTER 4A

PROVISION OF ENERGY CONSERVATION ASSISTANCE TO RESIDENTIAL CUSTOMERS BY ELECTRIC AND GAS UTILITIES

46-4A-2. Legislative findings; declaration of policy.

The General Assembly finds that the rising cost and uncertain supply of energy resources require an active program of energy conservation assistance, especially for the residential sector, which often has limited access to expert advice on energy conservation. In response to this need and to the mandate of the National Energy Conservation Policy Act, P.L. 95-619, the former Office of Energy Resources, now the Division of Energy Resources of the Georgia Environmental Finance Authority, on behalf of the Office of Planning and Budget, has developed the state plan for the Residential Conservation Service, which requires certain utilities to offer home energy audits and related services to residential

customers. Further, the General Assembly finds that in order to ensure the implementation of the state plan for the Residential Conservation Service and avoid the imposition of the federal plan, adequate authority for state enforcement of the state plan must be instituted. Therefore, in order to provide Georgia's regulated utilities and their customers with the most appropriate and flexible plan for carrying out the Residential Conservation Service, the General Assembly declares that the Office of Planning and Budget shall be authorized to promulgate regulations to establish the Residential Conservation Service and provide for its enforcement. (Ga. L. 1981, p. 1258, § 2; Ga. L. 1994, p. 1108, § 3; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted "Georgia Environmental Finance Authority" for "Georgia Environmental Facilities Authority" in the middle of the second sentence.

46-4A-4. Powers and duties of director generally.

The director shall have and may exercise the following powers and duties:

(1) To adopt, modify, repeal, and promulgate, after consultation with all affected parties and due notice and public hearings held in accordance with and established pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," rules and regulations for the establishment and implementation of the Residential Conservation Service program. The initial proposed regulations shall be based upon the state plan for the Residential Conservation Service as approved by the United States Department of Energy and shall include provisions for:

(A) Identification of covered utilities;

(B) Utility responsibilities, such as:

(i) Providing program information for customers;

(ii) Performance of on-site energy audits;

(iii) Arranging financing and installation;

(iv) Distribution of lists of contractors, suppliers, and lenders;

(v) Conducting inspections of installed measures;

(vi) Determining qualifications of auditors and inspectors; and

(vii) Establishing record keeping, financial accounting, and reporting requirements;

(C) Development and maintenance of master records of contractors, suppliers, and lenders;

(D) Consumer complaint mechanisms;

(E) Utility supply, installation, and financing of energy products;

(F) Coordination with affected agencies, especially the commission and the office of the Attorney General;

(G) Compliance and enforcement procedures; and

(H) Other program elements required by federal law;

(2) To administer and enforce this chapter and all rules and regulations and orders promulgated hereunder;

(3) To receive and administer any federal funding available for the purposes of this chapter; and

(4) To amend the regulations promulgated under this chapter to conform to any future changes in the federal law and regulations governing the program. (Ga. L. 1981, p. 1258, § 4; Ga. L. 2015, p. 1088, § 42/SB 148.)

The 2015 amendment, effective July 1, 2015, substituted "office of the Attorney General" for "Office of Consumer Affairs" in subparagraph (1)(F).

46-4A-12. Construction of chapter.

No provision of this chapter or any rules or regulations or orders hereunder shall be construed to be a limitation:

(1) On the activities of any privately or publicly owned utility which is not a covered utility;

(2) On the activities of covered utilities, when such activities are not subject to this chapter;

(3) On the activities of contractors, suppliers, or lenders, when such activities are not subject to this chapter;

(4) On the activities of the Division of Energy Resources of the Georgia Environmental Finance Authority in the enforcement or administration of any program or provision of law; and

(5) On the power of any state or local agency in the enforcement or administration of any provision of law it is specifically permitted or required to enforce or administer, including, but not limited to, the Public Service Commission, the office of the Attorney General, and the Construction Industry Licensing Board. (Ga. L. 1981, p. 1258, § 5; Ga. L. 1994, p. 1108, § 4; Ga. L. 2010, p. 949, § 1/HB 244; Ga. L. 2015, p. 1088, § 43/SB 148.)

The 2010 amendment, effective July 1, 2010, substituted "Georgia Environmental Finance Authority" for "Georgia Environmental Facilities Authority" in the middle of paragraph (4).

The 2015 amendment, effective July 1, 2015, substituted "office of the Attorney General" for "Office of Consumer Affairs" in paragraph (5).

46-4A-14. Civil penalties; removal of contractor, supplier, or lender from master record.

(a) Any covered utility which intentionally or negligently violates any provision of this chapter or the rules and regulations promulgated hereunder or which fails or refuses to comply with any final order of the director issued as provided in this chapter shall be liable for a civil penalty not to exceed $1,000.00 for such violation and an additional civil penalty not to exceed $500.00 for each day such violation continues.

(b) The director, after notice and hearing, shall determine whether or not any covered utility has intentionally or negligently violated any provision of this chapter or has failed or refused to comply with any final order of the director and may, upon a proper finding, issue his order imposing such civil penalties as provided in this Code section. Any covered utility so penalized under this section is entitled to judicial review. All hearings and proceedings for judicial review under this Code section shall be in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," as provided in this chapter. All penalties and interest recovered by the director, as provided in this Code section, together with the cost thereof, shall be paid into the state treasury to the credit of the general fund.

(c) Any contractor, supplier, or lender who is listed on the master record established by the Division of Energy Resources of the Georgia Environmental Finance Authority and who violates any provision of this chapter or the rules or regulations promulgated hereunder is subject to removal from the applicable master record in accordance with the rules and regulations established pursuant to the Residential Conservation Service program. (Ga. L. 1981, p. 1258, § 9; Ga. L. 1994, p. 1108, § 5; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted "Georgia Environmental Finance Authority" for "Georgia Environmental Facilities Authority" near the middle of subsection (c).

CHAPTER 5

TELEPHONE SERVICE

Article 1

General Provisions

Article 2

Telephone Service

Part 1

General Provisions

Part 1A

Telephone System for the Physically Impaired

Part 2

Construction and Operation of Lines, Plants, or Systems Generally

Part 3

Rural Telephone Cooperatives

Part 4

Emergency Telephone Number 9-1-1 System

Cross references. — Unlawful conduct during 9-1-1 call, § 16-11-39.2.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Liability for Inadequate Protection of Telephone Against Power Surge, 33 POF2d 721.

Use of Call Detail Record Evidence in Telecommunications "Phantom Traffic" and Other Litigation, 86 POF3d 217.

ARTICLE 1

GENERAL PROVISIONS

46-5-1. Exercise of power of eminent domain by telephone companies; placement of posts and other fixtures; regulation of construction of fixtures, posts, and wires near railroad tracks; liability of telephone companies for damages; required information; due compensation.

(a)(1) Any telephone company chartered by the laws of this or any other state shall have the right to construct, maintain, and operate its lines and facilities upon, under, along, and over the public roads and highways and rights of way of this state with the approval of the county or municipal authorities in charge of such roads, highways, and rights of way. The approval of such municipal authorities shall be limited to the process set forth in paragraph (3) of subsection (b) of this Code section, and the approval of the county shall be limited to the permitting process set forth in subsection (c) of this Code section. Upon making due compensation, as defined for municipal authorities in paragraph (9) of subsection (b) of this Code section and as provided for counties in subsection (c) of this Code section, a telephone company shall have the right to construct, maintain, and operate its lines through or over any lands of this state; on, along, and upon the

right of way and structures of any railroads; and, where necessary, under or over any private lands; and, to that end, a telephone company may have and exercise the right of eminent domain.

(2) Notwithstanding any other law, a municipal authority or county shall not:

(A) Require any telephone company to apply for or enter into an individual license, franchise, or other agreement with such municipal authority or county; or

(B) Impose any occupational license tax or fee as a condition of placing or maintaining lines and facilities in its public roads and highways or rights of way, except as specifically set forth in this Code section.

(3) A county or municipal authority shall not impose any occupational license, tax, fee, regulation, obligation, or requirement upon the provision of the services described in paragraphs (1) and (2) of Code Section 46-5-221, including any occupational license, tax, fee, regulation, obligation, or requirement specifically set forth in any part of this chapter other than Part 4.

(4) Whenever a telephone company exercises its powers under paragraph (1) of this subsection, the posts, arms, insulators, and other fixtures of its lines shall be erected, placed, and maintained so as not to obstruct or interfere with the ordinary use of such railroads or public roads and highways, or with the convenience of any landowners, more than may be unavoidable. Any lines constructed by a telephone company on the right of way of any railroad company shall be subject to relocation so as to conform to any uses and needs of such railroad company for railroad purposes. Such fixtures, posts, and wires shall be erected at such distances from the tracks of said railroads as will prevent any and all damage to said railroad companies by the falling of said fixtures, posts, or wires upon said railroad tracks; and such telephone companies shall be liable to said railroad companies for all damages resulting from a failure to comply with this Code section.

(5) No county or municipal authority shall impose upon a telephone company any build-out requirements on network construction or service deployment, and, to the extent that a telephone company has elected alternative regulation pursuant to Code Section 46-5-165, such company may satisfy its obligations pursuant to paragraph (2) of Code Section 46-5-169 by providing communications service, at the company's option, through any affiliated companies and through the use of any technology or service arrangement; provided, however, that such company shall remain subject to its obligations as set forth in paragraphs (4) and (5) of Code Section 46-5-169. The obligations

required pursuant to paragraph (2) of Code Section 46-5-169 shall not apply to a telephone company that has elected alternative regulation pursuant to Code Section 46-5-165 and does not receive distributions from the Universal Access Fund as provided for in Code Section 46-5-167.

(b)(1) Except as set forth in paragraph (6) of this subsection, any telephone company that places or seeks to place lines and facilities in the public roads and highways or rights of way of a municipal authority shall provide to such municipal authority the following information:

(A) The name, address, and telephone number of a principal office and local agent of such telephone company;

(B) Proof of certification from the Georgia Public Service Commission of such telephone company to provide telecommunications services in this state;

(C) Proof of insurance or self-insurance of such telephone company adequate to defend and cover claims of third parties and of municipal authorities;

(D) A description of the telephone company's service area, which description shall be sufficiently detailed so as to allow a municipal authority to respond to subscriber inquiries. For the purposes of this paragraph, a telephone company may, in lieu of or as supplement to a written description, provide a map on 8 1/2 by 11 inch paper that is clear and legible and that fairly depicts the service area within the boundaries of the municipal authority. If such service area is less than the boundaries of an entire municipal authority, the map shall describe the boundaries of the geographic area to be served in clear and concise terms;

(E) A description of the services to be provided;

(F) An affirmative declaration that the telephone company shall comply with all applicable federal, state, and local laws and regulations, including municipal ordinances and regulations, regarding the placement and maintenance of facilities in the public rights of way that are reasonable, nondiscriminatory, and applicable to all users of the public rights of way, including the requirements of Chapter 9 of Title 25, the "Georgia Utility Facility Protection Act"; and

(G) A statement in bold type at the top of the application as follows: "Pursuant to paragraph (2) of subsection (b) of Code Section 46-5-1 of the Official Code of Georgia Annotated, the municipal authority shall notify the applicant of any deficiencies in

this application within 15 business days of receipt of this application."

(2) If an application is incomplete, the municipal authority shall notify the telephone company within 15 business days of the receipt of such application; such notice shall specifically identify all application deficiencies. If no such notification is given within 15 business days of the receipt of an application, such application shall be deemed complete.

(3) Within 60 calendar days of the receipt of a completed application, the municipal authority may adopt such application by adoption of a resolution or ordinance or by notification to the telephone company. The failure of a municipal authority to adopt an application within 60 calendar days of the receipt of a completed application shall constitute final adoption of such application.

(4) If it modifies its service area or provisioned services identified in the original application, the telephone company shall notify the municipal authority of changes to the service area or the services provided. Such notice shall be given at least 20 days prior to the effective date of such change. Such notification shall contain a geographic description of the new service area or areas and new services to be provided within the jurisdiction of the affected municipal authority, if any. The municipal authority shall provide to all telephone companies located in its rights of way written notice of annexations and changes in municipal corporate boundaries which, for the purposes of this Code section, shall become effective 30 days following receipt.

(5) An application adopted pursuant to this Code section may be terminated by a telephone company by submitting a notice of termination to the affected municipal authority. For purposes of this Code section, such notice shall identify the telephone company, the affected service area, and the effective date of such termination, which shall not be less than 60 calendar days from the date of filing the notice of termination.

(6) Any telephone company that has previously obtained permits for the placement of its facilities, has specified the name of such telephone company in such permit application, has previously placed its facilities in any public right of way, and has paid and continues to pay any applicable municipal authority's occupational license taxes, permit fees, franchise fees, except as set forth in paragraph (8) of this subsection, or, if applicable, county permit fees shall be deemed to have complied with this Code section without any further action on the part of such telephone company except as set forth in paragraphs (8), (9), (11), and (17) of this subsection.

(7) Any telephone company that has placed lines and facilities in the public roads and highways or rights of way of a municipal authority without first obtaining permits or otherwise notifying the appropriate municipal authority of its presence in the public roads and highways or rights of way shall provide the information required by paragraph (1) of this subsection, if applicable, to such municipal authority on or before October 1, 2008. As of October 1, 2008, if any telephone company, other than those who meet the requirements of paragraph (6) of this subsection, has failed or fails to provide the information required by paragraph (1) of this subsection to the municipal authority in which its lines or facilities are located, such municipal authority shall provide written notice to such telephone company giving that company 15 calendar days from the date of receipt of such notice to comply with this subsection. In the event the 15 calendar day cure period expires without compliance, such municipal authority may petition the Georgia Public Service Commission which shall, after an opportunity for a hearing, order the appropriate relief.

(8)(A) In the event any telephone company has an existing, valid municipal franchise agreement as of January 1, 2008, the terms and conditions of such existing franchise agreement shall only remain effective and enforceable until the expiration of the existing agreement or December 31, 2012, whichever shall first occur.

(B) In the event any telephone company is paying an existing occupational license tax or fee, based on actual recurring local services revenues, as of January 1, 2008, such payment shall be considered the payment of due compensation without further action on the part of the municipal authority. In the event that the rate of such existing tax or fee exceeds 3 percent of actual recurring local service revenues, that rate shall remain effective until December 31, 2012; thereafter, the payment by such telephone company at the rate of 3 percent shall be considered the payment of due compensation without further action on the part of the municipal authority.

(9) As used in this Code section, "due compensation" for a municipal authority means an amount equal to no more than 3 percent of actual recurring local service revenues received by such company from its retail, end user customers located within the boundaries of such municipal authority. "Actual recurring local service revenues" means those revenues customarily included in the Uniform System of Accounts as prescribed by the Federal Communications Commission for Class "A" and "B" companies; provided, however, that only the local service portion of the following accounts shall be included:

(A) Basic local service revenue, as defined in 47 C.F.R. 32.5000;

(B) Basic area revenue, as defined in 47 C.F.R. 32.5001;

(C) Optional extended area revenue, as defined in 47 C.F.R. 32.5002;

(D) Public telephone revenue, as defined in 47 C.F.R. 32.5010;

(E) Local private line revenue, as defined in 47 C.F.R. 35.5040; provided, however, that the portion of such accounts attributable to audio and video program transmission service where both terminals of the private line are within the corporate limits of the municipal authority shall not be included;

(F) Other local exchange revenue, as defined in 47 C.F.R. 32.5060;

(G) Local exchange service, as defined in 47 C.F.R. 32.5069;

(H) Network access revenue, as defined in 47 C.F.R. 32.5080;

(I) Directory revenue, as defined in 47 C.F.R. 32.5230; provided, however, that the portion of such accounts attributable to revenue derived from listings in portion of directories not considered white pages shall not be included;

(J) Nonregulated operating revenue, as defined in 47 C.F.R. 32.5280; provided, however, that the portion of such accounts attributable to revenues derived from private lines shall not be included; and

(K) Uncollectible revenue, as defined in 47 C.F.R. 32.5300.

Any charge imposed by a municipal authority shall be assessed in a nondiscriminatory and competitively neutral manner.

(10) Any due compensation paid to municipal authorities pursuant to paragraph (9) of this subsection shall be in lieu of any other permit fee, encroachment fee, degradation fee, disruption fee, business license tax, occupational license tax, occupational license fee, or other fee otherwise permitted pursuant to the provisions of subparagraph (A) of paragraph (7) of Code Section 36-34-2 or Code Section 32-4-92 et seq. or any other provision of law regardless of nomenclature.

(11) A telephone company with facilities in the public rights of way of a municipal authority shall begin assessing due compensation, as defined in subsection (a) of this Code section, on subscribers on the date that service commences unless such company is currently paying a municipal authority's occupational license tax. Such due compensation shall be paid directly to each affected municipal authority within 30 calendar days after the last day of each calendar quarter. In the event that due compensation is not paid on or before 30 calendar days after the last day of each calendar quarter, the

affected municipal authority shall provide written notice to such telephone company, giving such company 15 calendar days from the date such company receives such notice to cure any such nonpayment. In the event the due compensation remitted to the affected municipal authority is not postmarked on or before the expiration of the 15 day cure period, such company shall pay interest thereon at a rate of 1 percent per month to the affected municipal authority. If the 15 day cure period expires on a Saturday, a Sunday, or a state legal holiday, the due date shall be the next business day. A telephone company shall not be assessed any interest on late payments if due compensation was submitted in error to a neighboring municipal authority.

(12) Each municipal authority may, no more than once annually, audit the business records of a telephone company to the extent necessary to ensure payment in accordance with this Code section. As used in this Code section, "audit" means a comprehensive review of the records of a company which is reasonably related to the calculation and payment of due compensation. Once any audited period of a company has been the subject of a requested audit, such audited period of such company shall not again be the subject of any audit. In the event of a dispute concerning the amount of due compensation due to an affected municipal authority under this Code section, an action may be brought in a court of competent jurisdiction by an affected municipal authority seeking to recover an additional amount alleged to be due or by a company seeking a refund of an alleged overpayment; provided, however, that any such action shall be brought within three years following the end of the quarter to which the disputed amount relates, although such time period may be extended by written agreement between the company and such affected municipal authority. Each party shall bear the party's own costs incurred in connection with any dispute. The auditing municipal authority shall bear the cost of the audit; provided, however, that if an affected municipal authority files an action to recover alleged underpayments of due compensation and a court of competent jurisdiction determines the company has underpaid due compensation due for any 12 month period by 10 percent or more, such company shall be required to pay such municipal authority's reasonable costs associated with such audit along with any due compensation underpayments; provided, further, that late payments shall not apply. All undisputed amounts due to a municipal authority resulting from an audit shall be paid to the municipal authority within 45 days, or interest shall accrue.

(13) The information provided pursuant to paragraph (1) of this subsection and any records or information furnished or disclosed by a telephone company to an affected municipal authority pursuant to

paragraph (12) of this subsection shall be exempt from public inspection under Article 4 of Chapter 18 of Title 50. It shall be the duty of such telephone company to mark all such documents as exempt from Article 4 of Chapter 18 of Title 50, and the telephone company shall defend, indemnify, and hold harmless any municipal authority and any municipal officer or employee in any request for, or in any action seeking, access to such records.

(14) No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim an affected municipal authority may have for further or additional sums payable as due compensation.

(15) Any amounts overpaid by a company as due compensation shall be deducted from future due compensation owed.

(16) A telephone company paying due compensation pursuant to this Code section may designate that portion of a subscriber's bill attributable to such charge as a separate line item of the bill and recover such amount from the subscriber.

(17) Nothing in this Code section shall affect the authority of a municipal authority to require telephone companies accessing the public roads and highways and rights of way of a municipal authority to obtain permits and otherwise comply with the reasonable regulations established pursuant to paragraph (10) of subsection (a) of Code Section 32-4-92.

(18) If a telephone company does not have retail, end user customers located within the boundaries of a municipal authority, then the payment by such company at the same rates that such payments were being made as of January 1, 2008, to a municipal authority for the use of its rights of way shall be considered the payment of due compensation; provided, however, that at the expiration date of any existing agreement for use of such municipal rights of way or December 31, 2012, whichever is earlier, the payment at rates in accordance with the rates set by regulations promulgated by the Department of Transportation shall be considered the payment of due compensation. Provided, further, that if a telephone company begins providing service after January 1, 2008, and such telephone company does not have retail, end user customers located within the boundaries of a municipal authority, the payment by such company at rates in accordance with the rates set by regulations promulgated by the Department of Transportation to a municipal authority for the use of its rights of way shall be considered the payment of due compensation.

(19) Nothing in this Code section shall be construed to affect any franchise fee payments which were in dispute on or before January 1, 2008.

(c) If a telephone company accesses the public roads and highways and rights of way of a county and such county requires such telephone company to pay due compensation, such due compensation shall be limited to an administrative cost recoupment fee which shall not exceed such county's direct, actual costs incurred in its permitting process, including issuing and processing permits, plan reviews, physical inspection and direct administrative costs; and such costs shall be demonstrable and shall be equitable among applicable users of such county's roads and highways or rights of way. Permit fees shall not include the costs of highway or rights of way acquisition or any general administrative, management, or maintenance costs of the roads and highways or rights of way and shall not be imposed for any activity that does not require the physical disturbance of such public roads and highways or rights of way or does not impair access to or full use of such public roads and highways or rights of way. Nothing in this Code section shall affect the authority of a county to require a telephone company to comply with reasonable regulations for construction of telephone lines and facilities in public highways or rights of way pursuant to the provisions of paragraph (6) of Code Section 32-4-42. (Ga. L. 1873, p. 69, § 2; Code 1873, § 3023; Code 1882, § 3023; Ga. L. 1889, p. 141, §§ 1, 2; Civil Code 1895, §§ 2346, 2347; Ga. L. 1905, p. 79, § 1; Civil Code 1910, §§ 2810, 2811; Code 1933, §§ 104-204, 104-205; Ga. L. 2008, p. 451, § 1/SB 379; Ga. L. 2012, p. 218, § 14/HB 397; Ga. L. 2012, p. 847, § 6/HB 1115; Ga. L. 2014, p. 866, § 46/SB 340; Ga. L. 2015, p. 5, § 46/HB 90.)

The 2008 amendment, effective July 1, 2008, designated the existing provisions of subsection (a) as paragraph (a)(1); in paragraph (a)(1), in the first sentence, inserted "and facilities", inserted "roads and", inserted "and rights of way", deleted the comma following "this state", inserted "roads,", and added ", and rights of way.", added the second sentence, and, in the third sentence, inserted "as defined for municipal authorities in paragraph (9) of subsection (b) of this Code section and as provided for counties in subsection (c) of this Code section,"; added paragraphs (a)(2) and (a)(3); redesignated former subsection (b) as paragraph (a)(4); in paragraph (a)(4), in the first sentence, substituted "under paragraph (1) of this subsection," for "under subsection (a) of this Code section,", substituted "shall" for "must", and inserted "roads and" and, in the second sentence, substituted "such railroad" for "the railroad"; added paragraph (a)(5); and added subsections (b) and (c).

The 2012 amendments. — The first 2012 amendment, effective April 17, 2012, in paragraph (b)(13), substituted "Article 4 of Chapter 18 of Title 50" for "Code Section 50-18-70" in the first sentence and substituted "Article 4 of Chapter 18 of Title 50" for "Code Section 50-18-70, et seq." in the second sentence. The second 2012 amendment, effective July 1, 2012, deleted "telegraph or" and "telegraph and" preceding "telephone" throughout this Code section; and added the second sentence of paragraph (a)(5).

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "this subsection" for "subsection (b) of this Code section" in paragraph (b)(7).

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted "47 C.F.R. 32.5230" for "47 C.F.R. 32.5320" in subparagraph (b)(9)(I).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, in sub-

paragraph (a)(2)(B), substituted "section" for "Section" at the end and in paragraph (b)(11), substituted "subsection (a) of this Code section" for "paragraph (a) of this subsection" in the first sentence.

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

46-5-2. Avoiding or attempting to avoid charges for use of telecommunication service; penalties; computation of damages.

(a) It shall be unlawful for any person to avoid or attempt to avoid or to cause another to avoid the lawful charges, in whole or in part, for any telecommunication service as defined in subsection (a) of Code Section 46-5-3 or for the transmission of a message, signal, or other communication by telephone or over telecommunication facilities by the use of any fraudulent scheme, means, or method, or by the use of any unlawful telecommunication device as defined in subsection (a) of Code Section 46-5-3 or other mechanical, electric, or electronic device; provided, however, that this Code section and Code Sections 46-5-3 and 46-5-4 shall not apply to amateur radio repeater operation involving a dial interconnect.

(b)(1) Except as otherwise provided in paragraph (2) of this subsection, any person who violates this Code section shall be guilty of a misdemeanor; provided, however, that upon conviction of a second or subsequent such offense under this Code section, the defendant commits a felony and shall be punished by a fine of not more than $5,000.00 or imprisoned for not less than one nor more than five years, or both.

(2) Any person who violates this Code section by avoiding or causing another to avoid lawful charges for any telecommunication service which lawful charges are in an amount in excess of $10,000.00 commits a felony and shall be punished by a fine of not more than $5,000.00 or imprisoned for not less than one nor more than five years, or both.

(3) The court may, in addition to any other sentence authorized by law, order a person convicted under this Code section to make restitution for the offense.

(4) Any person, corporation, or other entity aggrieved by a violation of this Code section may, in a civil action in any court of competent jurisdiction, obtain appropriate relief, including preliminary and other equitable or declaratory relief, compensatory and punitive damages, reasonable investigation expenses, cost of suit, and reasonable attorney's fees.

(5) Compensatory damages awarded by a court in a civil action under this Code section shall be computed as one of the following:

(A) At any time prior to the entering of a final judgment, the complaining party may elect to recover the actual damages suffered by the complaining party as a result of the violation of this Code section;

(B) In any case where a violator commits more than one violation of this Code section, the complaining party, at any time before final judgment is entered, may elect to recover, in lieu of actual damages, an award of statutory damages for all violations involved in the action in a sum not less than $250.00 nor more than $10,000.00 per violation. The amount of statutory damages shall be determined by the court as the court considers just;

(C) In any case where the court finds that any of the violations of this Code section were committed willfully and for the purposes of commercial advantage or financial gain, the court in its discretion may increase the award of damages, whether actual or statutory, by an amount of not more than $50,000.00; or

(D) Nothing in this paragraph shall prohibit the recovery of other types of damages otherwise authorized under paragraph (4) of this subsection. (Ga. L. 1975, p. 1534, §§ 1, 3; Ga. L. 1976, p. 1179, §§ 1, 3; Ga. L. 1977, p. 1170, § 1; Ga. L. 1984, p. 22, § 46; Ga. L. 1996, p. 1085, § 1; Ga. L. 2001, p. 848, § 1; Ga. L. 2012, p. 847, § 7/HB 1115.)

The 2012 amendment, effective July 1, 2012, substituted "telephone or over telecommunication facilities" for "telephone or telegraph or over telecommunication or telegraph facilities" near the middle of subsection (a).

46-5-8. Termination of wireless communications service contracts by service members.

(a) As used in this Code section, the term "service member" means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard on ordered federal duty for a period of 90 days or longer.

(b) Any service member may terminate his or her wireless telecommunications service contract by providing the wireless telecommunications provider with a written notice of termination, effective on the date specified in the notice, which date shall be at least 30 days after receipt of the notice by the wireless telecommunications provider, if any of the following criteria are met:

(1) The service member is required, pursuant to a permanent change of station orders, to move outside the area served by the wireless telecommunications provider or to an area where the type of wireless telecommunications service being provided to the service member is not available from the wireless telecommunications provider;

(2) The service member is discharged or released from active duty or state active duty and will return from such duty to an area not served by the wireless telecommunications provider or where the type of telecommunications service contracted for is not available from the wireless telecommunications provider;

(3) The service member is released from active duty after having entered into a contract for wireless telecommunications service while on active duty status and the wireless telecommunications provider does not provide telecommunications service or the same type of wireless telecommunications service contracted for in the region of the service member's home of record prior to entering active duty;

(4) The service member receives military orders requiring him or her to move outside the continental United States; or

(5) The service member receives temporary duty orders, temporary change of station orders, or active duty or state active duty orders to an area not served by the wireless telecommunications provider or where the type of wireless telecommunications service contracted for is not available from the wireless telecommunications provider, provided such orders are for a period exceeding 60 days.

(c) The written notice to the wireless telecommunications provider must be accompanied by either a copy of the official military orders or a written verification signed by the service member's commanding officer.

(d) Upon termination of a contract under this Code section, the service member is liable for the amount due under the contract prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the contract. The service member is not liable for any other fees due to the early termination of the contract as provided for in this Code section.

(e) The provisions of this Code section shall apply to any contract for wireless telecommunications service entered into on or after July 1, 2005, and to any renewals, modifications, or extensions of any such contract in effect on such date and may not be waived or modified by the agreement of the parties under any circumstances. (Code 1981, § 46-5-8, enacted by Ga. L. 2005, p. 213, § 8/SB 258.)

Effective date. — This Code section became effective July 1, 2005.

ARTICLE 2

TELEPHONE SERVICE

PART 1

GENERAL PROVISIONS

46-5-21. Using telephone communications for obscene, threatening, or harassing purposes.

Law reviews. — For annual survey of criminal law, see 57 Mercer L. Rev. 113 (2005).

JUDICIAL DECISIONS

Constitutionality.

Defendant's conviction for violating O.C.G.A. § 46-5-21(a)(1) was reversed as the statute was an overbroad infringement on defendant's First Amendment and Ga. Const. 1983, Art. I, Sec. I, Para. V rights to free speech; the statute does not contain the necessary language setting out the least restrictive means to further a compelling state interest as it applies to indecent or obscene speech, whether heard by children or adults, and whether not welcomed by listeners or spoken with intent to please. McKenzie v. State, 279 Ga. 265, 626 S.E.2d 77 (2005).

46-5-26. Access to live telephone operator.

(a) Each telecommunications utility and telecommunications company that provides operator service shall ensure that a caller may obtain access to a live operator through a method designed to be easily and clearly understandable and accessible to the caller. This Code section applies regardless of the method by which the telecommunications utility or telecommunications company provides the operator service. The requirements of this Code section shall not apply to telephones located in prisons or jail facilities or to wireless telecommunication services. For the purpose of this Code section, "operator services" means services that are provided when a caller dials "0".

(b) The failure of a telecommunications utility or telecommunications company to provide access to a live operator as required in subsection (a) of this Code section shall not serve as the basis for a cause of action for personal injuries or damage to property. (Code 1981, § 46-5-26, enacted by Ga. L. 1994, p. 520, § 1; Ga. L. 2012, p. 847, § 8/HB 1115.)

The 2012 amendment, effective July 1, 2012, deleted the former second sentence of subsection (a), which read: "A telecommunications utility or telecommunications company shall submit to the Public Service Commission the method by which the telecommunications utility or telecommunications company shall provide access to a live operator for review, except for a telecommunications utility or telecommunications company whose operator services are under the jurisdiction, regulation, and rules of the Public Service Commission."

46-5-27. Telephone solicitations to residential, mobile, or wireless subscribers; Public Service Commission to establish and maintain list of certain subscribers; authorization for imposition of administrative fees; confidential nature of data base; required identification.

(a) The General Assembly finds that:

(1) The use of the telephone to market goods and services is pervasive now due to the increased use of cost-effective telemarketing techniques;

(2) Over 30,000 businesses actively telemarket goods and services to business and residential customers;

(3) Every day, over 300,000 solicitors place calls to more than 18 million Americans, including citizens of this state;

(4) Telemarketing, however, can be an intrusive and relentless invasion of the privacy and peacefulness of individuals;

(5) Many citizens of this state are outraged over the proliferation of nuisance calls from telemarketers;

(6) Individuals' privacy rights and commercial freedom of speech can be balanced in a way that accommodates both the privacy of individuals and legitimate telemarketing practices; and

(7) It is in the public interest to establish a mechanism under which the individual citizens of this state can decide whether or not to receive telemarketing calls.

(b) As used in this Code section, the term:

(1) "Caller identification service" means a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls.

(2) "Residential, mobile, or wireless subscriber" means a person who has subscribed to telephone service from a local exchange company or mobile or wireless telephone service provider or other persons living or residing with such person.

(3) "Telephone solicitation" means any voice communication over a telephone line for the purpose of encouraging the purchase or rental

of, or investment in, property, goods, or services, but does not include communications:

(A) To any residential, mobile, or wireless subscriber with that subscriber's prior express invitation or permission;

(B) By or on behalf of any person or entity with whom a residential, mobile, or wireless subscriber has a prior or current business or personal relationship; or

(C) By or on behalf of a charitable organization which has filed a registration statement pursuant to Code Section 43-17-5, is exempt from such registration under paragraphs (1) through (6) of subsection (a) of Code Section 43-17-9, or is exempt from such registration as a religious organization or agency referred to in paragraph (2) of Code Section 43-17-2.

Such communication may be from a live operator, through the use of ADAD equipment as defined in Code Section 46-5-23, or by other means.

(c) No person or entity shall make or cause to be made any telephone solicitation to the telephone line of any residential, mobile, or wireless subscriber in this state who has given notice to the commission, in accordance with regulations promulgated under subsection (d) of this Code section, of such subscriber's objection to receiving telephone solicitations.

(d)(1) The commission shall establish and provide for the operation of a data base to compile a list of telephone numbers of residential, mobile, and wireless subscribers who object to receiving telephone solicitations. It shall be the duty of the commission to have such data base in operation no later than January 1, 1999.

(2) Such data base may be operated by the commission or by another entity selected by and awarded a contract by the commission.

(3) No later than January 1, 1999, the commission shall promulgate regulations which:

(A) Require each local exchange company to inform its residential, mobile, or wireless subscribers of the opportunity to provide notification to the commission or its contractor that such subscriber objects to receiving telephone solicitations;

(B) Specify the methods by which each residential, mobile, or wireless subscriber may give notice to the commission or its contractor of his or her objection to receiving such solicitations and methods for revocation of such notice;

(C) Specify the length of time for which a notice of objection shall be effective and the effect of a change of telephone number on such notice;

(D) Specify the methods by which such objections and revocations shall be collected and added to the data base;

(E) Specify the methods by which any person or entity desiring to make telephone solicitations will obtain access to the data base as required to avoid calling the telephone numbers of residential, mobile, or wireless subscribers included in the data base; and

(F) Specify such other matters relating to the data base that the commission deems desirable.

(4) If, pursuant to 47 U.S.C. Section 227(c)(3), the Federal Communications Commission establishes a single national data base of telephone numbers of subscribers who object to receiving telephone solicitations, the commission shall include the part of such single national data base that relates to Georgia in the data base established under this Code section.

(e) The commission may provide by rule or regulation for administrative fees to be imposed upon:

(1) A residential, mobile, or wireless subscriber for each notice of inclusion in the data base established under this Code section; provided, however, that the commission shall not set this fee in an amount greater than $5.00; and

(2) A person or entity desiring to make telephone solicitations for access to or for electronic copies of the data base established under this Code section.

(f)(1) Information contained in the data base established under this Code section shall be used only for the purpose of compliance with this Code section or in a proceeding or action under subsection (h) or (i) of this Code section. Such information shall not be subject to public inspection or disclosure under Article 4 of Chapter 18 of Title 50.

(2) No person shall knowingly compile or disseminate or compile and disseminate information obtained from the data base for any reason other than those legitimate purposes established by law. Any person found guilty of violating this subsection shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $1,000.00. Each instance of an unauthorized disclosure of information from the data base shall constitute a separate offense.

(g)(1) Any person or entity who makes a telephone solicitation to the telephone line of any residential, mobile, or wireless subscriber in this state shall, at the beginning of such call, state clearly the identity of the person or entity initiating the call.

(2) No person or entity who makes a telephone solicitation to the telephone line of a residential, mobile, or wireless subscriber in this

state shall knowingly utilize any method to block or otherwise circumvent such subscriber's use of a caller identification service.

(h) The Attorney General shall have authority to initiate proceedings, pursuant to Code Section 10-1-397, relating to a knowing violation or threatened knowing violation of subsection (c) or (g) of this Code section. Such proceedings include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of $2,000.00 for each knowing violation, and to seek additional relief in any superior court of competent jurisdiction. Such actions shall be brought in the name of the state. The provisions of Code Sections 10-1-398, 10-1-398.1, and 10-1-405 shall apply to proceedings initiated by the Attorney General under this subsection. The Attorney General is authorized to issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of subsection (c) or (g) of this Code section, in accordance with the provisions of Code Sections 10-1-403 and 10-1-404.

(i) Any person who has received more than one telephone solicitation within any 12 month period by or on behalf of the same person or entity in violation of subsection (c) or (g) of this Code section may either bring an action to enjoin such violation; bring an action to recover for actual monetary loss from such knowing violation or to receive up to $2,000.00 in damages for each such knowing violation, whichever is greater; or bring both such actions.

(j) It shall be a defense in any action or proceeding brought under subsection (h) or (i) of this Code section that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of this Code section.

(k) No action or proceeding may be brought under subsection (h) or (i) of this Code section:

(1) More than two years after the person bringing the action knew or should have known of the occurrence of the alleged violation; or

(2) More than two years after the termination of any proceeding or action by the State of Georgia, whichever is later.

(l) A court of this state may exercise personal jurisdiction over any nonresident or his or her executor or administrator as to an action or proceeding authorized by this Code section in accordance with the provisions of Code Section 9-10-91.

(m) The remedies, duties, prohibitions, and penalties of this Code section are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

(n) No provider of telephone caller identification service shall be held liable for violations of this Code section committed by other persons or entities. (Code 1981, § 46-5-27, enacted by Ga. L. 1998, p. 505, § 1; Ga. L. 2003, p. 562, § 1; Ga. L. 2004, p. 631, § 46; Ga. L. 2015, p. 1088, § 44/SB 148.)

The 2015 amendment, effective July 1, 2015, in subsection (h), substituted "Attorney General" for "administrator appointed pursuant to subsection (g) of Code Section 10-1-395" at the beginning of the first sentence and substituted "Attorney General" for "administrator" in the fourth and fifth sentences.

Law reviews. — For note on the 2003 amendment to this section, see 20 Ga. St. U.L. Rev. 228 (2003).

46-5-28. Consent required for inclusion of subscribers' names or dialing numbers in a wireless telephone data base or a traditional telephone directory; exceptions; disclosure of wireless numbers to telemarketers prohibited; violations; immunity of service suppliers for authorized disclosures.

(a) As used in this Code section, the term:

(1) "Service supplier" means a person or entity who provides wireless service to a telephone subscriber.

(2) "Traditional telephone directory" means a telephone directory, in any format, containing a majority of the landline telephone numbers for the given geographic coverage area for that directory.

(3) "Wireless service" means "commercial mobile service" as defined under Section 332(D) of the Federal Telecommunications Act of 1996 (47 U.S.C. Section 157, et seq.), regulations of the Federal Communications Commission, and the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) and includes real-time, two-way interconnected voice service which is provided over networks which utilize intelligent switching capability and offer seamless handoff to customers. The term does not include one-way signaling service, data transmission service, nonlocal radio access line service, or a private telecommunications service.

(4) "Wireless telephone data base" means any collection of telephone numbers that identifies the names and telephone numbers of multiple subscribers of one or more service suppliers.

(b) A service supplier or any direct or indirect affiliate or agent of a service supplier providing the name and dialing number of a subscriber for inclusion in any wireless telephone data base which is or will be made publicly available shall not include the dialing number of any wireless service subscriber without first obtaining the express consent

of that subscriber. The subscriber's consent shall meet all of the following requirements:

(1) It shall be recorded in oral, electronic, or written form;

(2) It shall be:

(A) A separate document that is not attached to any other document or if it is within another document shall be in a separate section of the document that includes the disclosure;

(B) A separate screen or if it is within another screen shall be in a separate section of the screen that includes the disclosure; or

(C) A sound recording of a discrete verbal confirmation;

(3) It shall be unambiguous and conspicuously disclose that the subscriber is consenting to have the subscriber's dialing number sold or licensed as part of a publicly accessible wireless telephone data base; and

(4) The service supplier must disclose in an unambiguous and conspicuous manner to the wireless customer that upon consent: (A) the customer is agreeing to have his or her wireless number accessed by anyone who utilizes the wireless telephone data base; and (B) if the customer has a rate plan that charges the customer for usage, that calls received as a result, unsolicited or otherwise, will be applied against the subscriber's planned minutes.

(c) A subscriber who provides express consent pursuant to subsection (b) of this Code section may revoke that consent at any time. A service supplier shall comply with the subscriber's request to opt out within a reasonable period of time, not to exceed 60 days.

(d) A subscriber shall not be charged for making the choice to not be listed in a publicly accessible wireless telephone data base.

(e) This Code section does not apply to the provision of telephone numbers to the following parties for the purposes indicated; provided, however, that such parties shall use such telephone numbers solely for the purposes indicated and shall not transfer such telephone numbers to any third party:

(1) Any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or private for-profit agency operating under contract with, and at the direction of, one or more of these agencies, for the exclusive purpose of responding to a 9-1-1 call or communicating an imminent threat to life or property. This information or these records shall not be open to examination for any purpose not directly connected with the administration of the services specified in this paragraph;

(2) A lawful process issued under state or federal law;

(3) A service supplier providing service between service areas for the provision to the subscriber of telephone service between service areas, or third parties for the limited purpose of providing collection and billing services for the service supplier;

(4) A service supplier to effectuate a subscriber's request to transfer the subscriber's assigned telephone number from the subscriber's existing service supplier to a new service supplier;

(5) The commission; or

(6) A traditional telephone directory publisher, for the purposes of publishing a directory in any format, so long as the information was published before July 1, 2005.

(f) Subsequent to July 1, 2005, a traditional telephone directory publisher must obtain the wireless subscriber's recorded oral, electronic, or written consent for the wireless subscriber's name and wireless dialing number to be published in a traditional telephone directory.

(g) No service supplier shall sell or otherwise provide a list of wireless numbers to any telemarketer except that such numbers may be provided to a telemarketer affiliated with the service supplier for the sole purpose of facilitating communication by or on behalf of the service supplier as permitted under subparagraph (b)(3)(B) of Code Section 46-5-27.

(h) Every deliberate violation of this Code section is grounds for a civil suit by the aggrieved subscriber against the service supplier responsible for the violation.

(i) No service supplier shall be subject to criminal or civil liability for the release of customer information as authorized by this Code section. (Code 1981, § 46-5-28, enacted by Ga. L. 2005, p. 1191, § 1/SB 46; Ga. L. 2006, p. 72, § 46/SB 465.)

Effective date. — This Code section became effective July 1, 2005.

The 2006 amendment, effective April 14, 2006, part of an Act to revise, modernize, and correct the Code, substituted "data base" for "database" throughout this Code section; substituted "a 9-1-1 call" for "a 911 call" in the first sentence of paragraph (e)(1), and substituted "July 1, 2005" for "the effective date of this Code section" in paragraph (e)(6) and subsection (f).

PART 1A

TELEPHONE SYSTEM FOR THE PHYSICALLY IMPAIRED

46-5-30. Establishment, administration, and operation of state-wide dual party relay service and audible universal information access service.

(a) The General Assembly finds and declares that it is in the public interest to provide basic telecommunications services to all citizens of this state who, because of physical impairments, particularly hearing and speech impairments, cannot otherwise communicate over the telephone. It is further in the public interest to take advantage of innovative technological uses of basic telecommunications services to allow for universal access to information by blind and otherwise print disabled citizens of this state.

(b) The commission shall establish, implement, administer, and promote a state-wide single provider dual party relay service operating seven days per week, 24 hours per day, and contract for the administration and operation of such relay service. The commission shall also establish, implement, administer, and promote a state-wide audible universal information access service operating seven days per week and 24 hours per day and shall contract for the administration and operation of such information access service. The commission shall further establish, implement, administer, and promote a telecommunications equipment distribution program and contract for the administration and operation of such program.

(c) The commission shall require all local exchange telephone companies in this state, except those operated by telephone membership corporations, to impose a monthly maintenance surcharge on all residential and business local exchange access facilities. For the purpose of this subsection, "exchange access facility" means the access from a particular telephone subscriber's premise to the telephone system of a local exchange telephone company. "Exchange access facility" includes local exchange company provided access lines, private branch exchange trunks, and centrex network access registers, all as defined by tariffs of telephone companies as approved by the commission. The amount of the surcharge shall be determined by the commission based upon the amount of funding necessary to accomplish the purposes of this Code section and provide the services on an ongoing basis; however, in no case shall the amount exceed 20¢ per month. A maximum of 5¢ of this monthly surcharge per access line shall be utilized for a telecommunications equipment distribution program and a maximum of 1¢ of this monthly surcharge per access line shall be utilized to fund an audible universal information access service. If the projected cost of the

operation of the relay service exceeds a monthly surcharge of 15¢ at any time, funding for the telecommunications equipment distribution program and the audible universal information access service will be reduced by the amount required to fully fund the relay service, under the existing cap of 20¢ for the period of time necessary. No additional fees other than the surcharge authorized by this subsection shall be imposed on any user of such relay or information access service. The local exchange companies shall collect the surcharge from their customers and transfer the moneys collected to a special fund to be held separate from all other funds. The fund shall be used solely for the administration and operation of the relay service, the information access service, and the telecommunications equipment distribution program and for other hearing technology and shall not be imposed, collected, or expended for any other purpose.

(d) The dual party relay system shall protect the privacy of persons to whom relay services are provided and shall require all operators to maintain the confidentiality of all telephone messages. The confidentiality and privacy of persons to whom relay services are provided will be protected by means of the following:

(1) The relay center shall not maintain any form of permanent copies of messages relayed by their operators or allow the content of telephone messages to be communicated to, or accessible to, nonstaff members;

(2) Persons using the relay services shall not be required to provide any personal identifying information until the party they are calling is on the line, and shall only be required to identify themselves to the extent necessary to fulfill the purpose of their call;

(3) Relay operators shall not leave messages with third parties unless instructed to do so by the person making the call;

(4) Relay operators shall not intentionally alter a relayed conversation; and

(5) Relay operators shall not refuse calls or limit the length of calls.

(e) Neither the commission nor the providers of the dual party relay system service or the audible universal information access service nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees of the providers of the dual party relay system service or the audible universal information access service shall be liable for any claims, actions, damages, or causes of action arising out of or resulting from the establishment, participation in, or operation of the dual party relay system service or the audible universal information access service.

(f) The commission shall select the telecommunications carrier which will provide the relay system service and award the contract for

this service to the offerer whose proposal is the most advantageous to the state, considering price, the interests of the hearing impaired and speech impaired community in having access to a high quality and technologically advanced telecommunications system, and all other factors listed in the commission's request for proposals.

(f.1) The commission shall select the service provider which will provide and manage the audible universal information access service and shall award the contract for this service to the offerer whose proposal is the most advantageous to the state, considering price, the interests of the blind and print disabled community in having access to a high quality and technologically advanced interactive audible universal information access system, the maintenance of such system, the training provided on the use of such service, outreach efforts, and all other factors listed in the commission's request for proposals.

(g) The commission shall select a distribution agency to manage the telecommunications equipment distribution program and award the contract for this service to the offerer whose proposal is the most advantageous to the state, considering price, the interests of the hearing impaired and speech impaired community in obtaining appropriate and effective telecommunications equipment, the training of recipients on the use of telecommunications devices, outreach efforts, and all other factors listed in the commission's request for proposals.

(h) The commission shall establish guidelines for eligibility for participation in the distribution program, taking into consideration a person's certified medical need and prohibiting distribution of telecommunications equipment to any person whose income exceeds 200 percent of the federal poverty level. The commission shall utilize appropriate external expertise, as necessary, to establish these guidelines, including contracting with public agencies or private entities. Funding for any such contracts will be covered by the $0.05 portion of the monthly surcharge utilized for the telecommunications equipment distribution program.

(i) The commission shall establish eligibility guidelines for participation in the audible universal information access service, taking into account a person's certified medical need. The commission shall utilize appropriate external expertise, as necessary, to establish these guidelines, including contracting with public agencies or private entities. Funding for such contracts will be covered by the 1¢ portion of the monthly surcharge utilized for the audible universal information access service.

(j) The commission shall establish a telecommunications equipment distribution program advisory committee to provide input on program operation and the types of equipment to be, and being, distributed by

the program. The commission shall select the equipment to be distributed by the program and shall incorporate this selection into the commission's request for proposals for a distribution agency.

(k) The commission shall provide that the dual party telephone relay telephone system shall be operational no later than July 1, 1991, that the telecommunications equipment distribution program shall be operational no later than March 31, 2003, and the audible universal information access service shall be operational no later than July 1, 2006. (Code 1981, § 46-5-30, enacted by Ga. L. 1989, p. 657, § 1; Ga. L. 1990, p. 1118, § 1; Ga. L. 2002, p. 624, § 1; Ga. L. 2005, p. 1118, § 1/HB 669; Ga. L. 2006, p. 72, § 46/SB 465; Ga. L. 2007, p. 241, § 2/HB 655.)

The 2005 amendment, effective July 1, 2005, added the last sentence in subsection (a); in subsection (b), added the second sentence and substituted "further" for "also" in the last sentence; in subsection (c), added "and a maximum of $0.01 of this monthly surcharge per access line shall be utilized to fund an audible universal information access service" at the end of the fifth sentence, inserted "and the audible universal information access service" in the sixth sentence, inserted "or information access" in the seventh sentence, and inserted "e, the information access service," in the last sentence; in subsection (e), substituted "providers" for "provider" and inserted "or the audible universal information access service" three times; added subsections (f.1) and (i); redesignated former subsections (i) and (j) as present subsections (j) and (k), respectively; and in subsection (k), deleted "and" following "July 1, 1991," and added ", and the audible universal information access service shall be operational no later than July 1, 2006" at the end.

The 2006 amendment, effective April 14, 2006, part of an Act to revise, modernize, and correct the Code, substituted "basic telecommunications services" for "basic telecommunication services" near the middle of subsection (a); substituted "1¢" for "$0.01" in subsections (c) and (i); in subsection (c), substituted "5¢" for "$0.05" in the fifth sentence, and in the sixth sentence, substituted "15¢" for "$0.15" and substituted "20¢" for "$0.20"; substituted "advanced telecommunications system" for "advanced telecommunication system" near the end of subsection (f); and substituted "use of telecommunications devices" for "use of telecommunication devices" near the end of subsection (g).

The 2007 amendment, effective July 1, 2007, inserted "and for other hearing technology" near the end of the last sentence in subsection (c).

Part 2

Construction and Operation of Lines, Plants, or Systems Generally

46-5-41. Obtaining of certificate of public convenience and necessity for construction, operation, acquisition, or extension of telephone lines, plants, or systems.

No person shall construct or operate any telephone line, plant, or system or any extension thereof or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Public Service Commission a certificate that the present or future public convenience and necessity require or will require such construction,

operation, or acquisition. (Ga. L. 1950, p. 311, § 1; Ga. L. 2012, p. 847, § 9/HB 1115.)

The 2012 amendment, effective July 1, 2012, substituted "No" for "Except as provided in Code Section 46-5-46, no" in the beginning of this Code section.

46-5-46. Granting of certificates to persons engaged in construction or operation of telephone line, plant, or system as of February 17, 1950.

Repealed by Ga. L. 2012, p. 847, § 10/HB 1115, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1950, p. 311, §§ 1, 5.

Part 3

Rural Telephone Cooperatives

46-5-70. Filing of articles with clerk of court.

The applicants shall file the application, including the articles of incorporation and the order of the judge thereon, in the office of the clerk of the superior court of the county in which the principal office of the cooperative is to be located. (Ga. L. 1950, p. 192, § 11; Ga. L. 2010, p. 9, § 1-85/HB 1055.)

The 2010 amendment, effective May 12, 2010, deleted ", and shall concurrently therewith deposit with and pay to said clerk the fee provided for in Code Section 46-5-100" following "located" at the end of this Code section.

46-5-73. Duty of clerk to deliver to applicants certified copies of articles and of order thereon.

Upon the filing of the articles of incorporation and the order of the judge thereon with the clerk of the superior court, the clerk shall forthwith deliver to the applicants or their attorney two certified copies of the articles of incorporation and the order of the judge and the filing of the clerk thereon. (Ga. L. 1950, p. 192, § 14; Ga. L. 2010, p. 9, § 1-86/HB 1055.)

The 2010 amendment, effective May 12, 2010, deleted "and the fee being paid as required by Code Section 46-5-70" following "court", deleted "thereon," following "judge", and deleted "and receipt for the cost which has been paid to the clerk" following "thereon" at the end.

46-5-97. Limitation of actions.

JUDICIAL DECISIONS

Cited in Daniel v. Amicalola Elec. Mbrshp. Corp., 289 Ga. 437, 711 S.E.2d 709 (2011).

46-5-100. Fees.

Each cooperative shall be charged by the Secretary of State the fees specified in Code Section 14-2-122 for the filing of documents and issuance of certificates. (Ga. L. 1950, p. 192, § 41; Ga. L. 1981, p. 1396, § 17; Ga. L. 1987, p. 325, § 1; Ga. L. 1989, p. 946, § 112; Ga. L. 1991, p. 1324, § 10; Ga. L. 2010, p. 9, § 1-87/HB 1055.)

The 2010 amendment, effective May 12, 2010, deleted former subsection (a), which read: "Each cooperative shall be charged by the clerk of the superior court the fee as provided in subsection (g) of Code Section 15-6-77 for the filing of incorporation proceedings." and deleted the former subsection (b) designation.

Part 4

Emergency Telephone Number 9-1-1 System

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Inadequate Response to Emergency Telephone Call, 2 POF3d 583.

46-5-120. Short title.

This part shall be known and may be cited as the "Georgia Emergency Telephone Number 9-1-1 Service Act of 1977." (Ga. L. 1977, p. 1040, § 1; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" in this Code section.

Editor's notes. — Ga. L. 2007, p. 318, § 2, effective July 1, 2007, reenacted this Code section without change.

46-5-121. Legislative intent.

(a) The General Assembly finds and declares that it is in the public interest to shorten the time required for a citizen to request and receive emergency aid. There currently exist numerous different emergency phone numbers throughout the state. Provision for a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contri-

bution to law enforcement and other public service efforts by making it easier to notify public safety personnel. Such a simplified means of procuring emergency services will result in the saving of lives, a reduction in the destruction of property, and quicker apprehension of criminals. It is the intent of the General Assembly to establish and implement a cohesive state-wide emergency telephone number 9-1-1 system which will provide citizens with rapid, direct access to public safety agencies by dialing telephone number 9-1-1 with the objective of reducing the response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services.

(b) The General Assembly further finds and declares that the benefits of 9-1-1 service should be widely available, regardless of whether a 9-1-1 call is placed from a traditional landline telephone or from a wireless telephone. It is also in the public interest that users of wireless telephones should bear some of the cost of providing this lifesaving service, as users of landline telephones currently do. It is the intent of the General Assembly to bring wireless telephone service within the scope of this part and to establish a means by which local public safety agencies may provide enhanced 9-1-1 service to wireless telephone users.

(c) The General Assembly further finds and declares that communication technology is rapidly and constantly changing. It is in the public interest that as different means of accessing 9-1-1 service emerge, that the users of such technology bear some of the cost of providing this lifesaving service, as users of landline and wireless telephones currently do. It is the intent of the General Assembly to bring these new and emerging technologies within the scope of this part and establish a means by which local public safety agencies may provide 9-1-1 service to such users.

(d) The General Assembly further finds and declares that the safety and well-being of the citizens of Georgia is of the utmost importance, and it is in the public interest to provide the highest level of emergency response service on a local, regional, and state-wide basis.

(e) The General Assembly further finds that the collection methodology for prepaid wireless telecommunications service should effectively capture 9-1-1 charges from prepaid users. It is the intent of the General Assembly to move the collection of existing 9-1-1 charges on prepaid wireless service to the retail point of sale. (Ga. L. 1977, p. 1040, § 2; Ga. L. 1998, p. 1017, § 2; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394; Ga. L. 2011, p. 393, § 1/HB 256; Ga. L. 2011, p. 563, § 1/SB 156; Ga. L. 2014, p. 866, § 46/SB 340.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" throughout this Code section.

The 2007 amendment, effective July 1, 2007, added subsections (c) and (d).

The 2011 amendments. — The first 2011 amendment, effective January 1, 2012, added subsection (e). The second 2011 amendment, effective January 1, 2012, made identical changes.

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsections (b) and (c).

46-5-122. Definitions.

As used in this part, the term:

(1) "Addressing" means the assigning of a numerical address and street name (the name may be numerical) to each location within a local government's geographical area necessary to provide public safety service as determined by the local government. This address replaces any route and box number currently in place in the 9-1-1 data base and facilitates quicker response by public safety agencies.

(2) "Agency" means the Georgia Emergency Management Agency established pursuant to Code Section 38-3-20 unless the context clearly requires otherwise.

(2.1) "Call" means any communication, message, signal, or transmission.

(2.2) "Center" means the Georgia Public Safety Training Center.

(2.3) "Department" means the Department of Community Affairs established pursuant to Code Section 50-8-1.

(3) "Director" means the director of emergency management appointed pursuant to Code Section 38-3-20.

(4) "Cost recovery" means the mechanism by which service suppliers may recover the recurring and nonrecurring costs they expend on the implementation of wireless 9-1-1 services.

(5) "Emergency 9-1-1 system" or "9-1-1 system" means a telephone service, computer service, wireless service, or other service which facilitates the placing of calls by persons in need of emergency services to a public safety answering point by dialing the telephone number 9-1-1 and under which calls to 9-1-1 are answered or otherwise responded to by public safety answering points established and operated by the local government subscribing to the 9-1-1 service. The term "emergency 9-1-1 system" also includes "enhanced 9-1-1 service," which means an emergency system that provides the user with emergency 9-1-1 system service and, in addition, directs 9-1-1 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification features.

(6) "Enhanced ZIP Code" means a United States postal ZIP Code of 9 or more digits.

(7) "Exchange access facility" means the access from a particular telephone subscriber's premises to the telephone system of a service supplier. Exchange access facilities include service supplier provided access lines, PBX trunks, and Centrex network access registers, all as defined by tariffs of the telephone companies as approved by the Georgia Public Service Commission. The term "exchange access facility" also includes Voice over Internet Protocol service suppliers and any other communication, message, signal, or information delivery system capable of initiating a 9-1-1 emergency call. Exchange access facilities do not include service supplier owned and operated telephone pay station lines, Wide Area Telecommunications Services (WATS), Foreign Exchange (FX), or incoming only lines.

(8) "FIPS" means the Federal Information Processing Standard (FIPS) 55-3 or any future enhancement.

(9) "Local government" means any city, county, military base, or political subdivision of Georgia and its agencies.

(10) "Mobile telecommunications service" means commercial mobile radio service, as such term is defined in 47 C.F.R. Section 20.3.

(11) "9-1-1 charge" means a contribution to the local government for the 9-1-1 service start-up equipment costs, subscriber notification costs, addressing costs, billing costs, nonrecurring and recurring installation, maintenance, service, and network charges of a service supplier providing 9-1-1 service pursuant to this part, and costs associated with the hiring, training, and compensating of dispatchers employed by the local government to operate said 9-1-1 system at the public safety answering points.

(11.1) "9-1-1 number" means the digits, address, Internet Protocol address, or other information used to access or initiate a call to a public safety answering point.

(12) "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

(12.1) "Prepaid wireless service" means any method where a telephone subscriber pays in advance for a wireless telecommunications connection:

(A) That is sold in predetermined units or dollars:

(i) The number of which declines with use in a known amount; and

(ii) Which expire without an additional retail purchase of units or dollars;

(B) That is not offered in conjunction with other communications services for which the terms permit payment in arrears; and

(C) The charges for which are:

(i) Not billed to any telephone subscriber or other person; or

(ii) Not provided to a telephone subscriber or other person in a monthly statement.

Such term shall include, without limitation, calling or usage privileges included with the purchase of a wireless telephone as well as additional calling or usage privileges purchased by any means, including, without limitation, a calling card, a call, or an Internet transaction.

(13) "Public agency" means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides or has authority to provide fire-fighting, law enforcement, ambulance, medical, or other emergency services.

(14) "Public safety agency" means a functional division of a public agency which provides fire-fighting, law enforcement, emergency medical, suicide prevention, emergency management dispatching, poison control, drug prevention, child abuse, spouse abuse, or other emergency services.

(15) "Public safety answering point" means the public safety agency which receives incoming 9-1-1 telephone calls and dispatches appropriate public safety agencies to respond to such calls.

(16) "Service supplier" means a person or entity who provides telephone service to a telephone subscriber.

(16.1) "Telephone service" means any method by which a 9-1-1 emergency call is delivered to a public safety answering point. The term "telephone service" shall include local exchange telephone service or other telephone communication service, wireless service, prepaid wireless service, mobile telecommunications service, computer service, Voice over Internet Protocol service, or any technology that delivers or is required by law to deliver a call to a public safety answering point.

(17) "Telephone subscriber" means a person or entity to whom telephone service, either residential or commercial, is provided. When the same person, business, or organization has several telephone access lines, each exchange access facility shall constitute a

separate subscription. When the same person, business, or organization has several wireless telephones, each wireless telecommunications connection shall constitute a separate connection.

(17.1) "Voice over Internet Protocol service" means any technology that permits a voice conversation using a voice connection to a computer, whether through a microphone, a telephone, or other device, which sends a digital signal over the Internet through a broadband connection to be converted back to the human voice at a distant terminal and that delivers or is required by law to deliver a call to a public safety answering point. Voice over Internet Protocol service shall also include interconnected Voice over Internet Protocol service, which is service that enables real-time, two-way voice communications, requires a broadband connection from the user's location, requires Internet protocol compatible customer premises equipment, and allows users to receive calls that originate on the public service telephone network and to terminate calls to the public switched telephone network.

(17.2) "Voice over Internet Protocol service supplier" means a person or entity who provides Voice over Internet Protocol service to subscribers for a fee.

(18) "Wireless enhanced 9-1-1 charge" means a contribution to the local government for the following:

(A) The costs to the local government of implementing or upgrading, and maintaining, an emergency 9-1-1 system which is capable of receiving and utilizing the following information, as it relates to 9-1-1 calls made from a wireless telecommunications connection: automatic number identification, the location of the base station or cell site which receives the 9-1-1 call, and the location of the wireless telecommunications connection;

(B) Nonrecurring and recurring installation, maintenance, service, and network charges of a wireless service supplier to provide the information described in subparagraph (A) of this paragraph; and

(C) Other costs which may be paid with money from the Emergency Telephone System Fund, pursuant to subsection (f) of Code Section 46-5-134.

(19) "Wireless service" means "commercial mobile service" as defined under Section 332(D) of the federal Telecommunications Act of 1996 (47 U.S.C. Section 157, et seq.), regulations of the Federal Communications Commission, and the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) and includes real-time, two-way interconnected voice service which is provided over networks which

utilize intelligent switching capability and offer seamless handoff to customers. The term does not include one-way signaling service, data transmission service, nonlocal radio access line service, or a private telecommunications service. The term does include prepaid wireless service.

(20) "Wireless service supplier" means a provider of wireless service.

(21) "Wireless telecommunications connection" means any mobile station for wireless service that connects a provider of wireless service to a provider of telephone service. (Ga. L. 1977, p. 1040, § 3; Ga. L. 1984, p. 22, § 46; Ga. L. 1985, p. 149, § 46; Ga. L. 1988, p. 1984, § 1; Ga. L. 1990, p. 179, § 1; Ga. L. 1991, p. 93, § 1; Ga. L. 1993, p. 1368, § 1; Ga. L. 1998, p. 1017, § 3; Ga. L. 1999, p. 873, § 1; Ga. L. 2004, p. 631, § 46; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394; Ga. L. 2011, p. 240, § 1/HB 280; Ga. L. 2012, p. 820, § 1/HB 1049.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" throughout this Code section; redesignated former paragraphs (1.1) and (2) as present paragraphs (2) and (3), respectively; added present paragraph (4); redesignated former paragraph (3) as present paragraph (5); added present paragraph (6); redesignated former paragraph (4) as present paragraph (7); added present paragraph (8); redesignated former paragraph (5) as present paragraph (9); added present paragraph (10); redesignated former paragraph (6) as present paragraph (11); added present paragraph (12); redesignated former paragraphs (7) through (14) as present paragraphs (13) through (21), respectively; and in present paragraph (14), substituted "emergency management dispatching" for "civil defense".

The 2007 amendment, effective July 1, 2007, added paragraphs (2.1) through (2.3), (11.1), (12.1), (16.1), (17.1), and (17.2); in paragraph (5), in the first sentence, inserted "or '9-1-1 system'", deleted "local exchange" preceding "telephone service" near the beginning of the first sentence, substituted ", computer service," for "or", inserted ", or other service", inserted "or otherwise responded to", and, in the second sentence, deleted "telephone" preceding "system that provides" near the beginning, and substituted "user" for "caller"; substituted "Code" for "code" twice in paragraph (6); added the present third sentence in paragraph (7); substituted the present provision of paragraph (16) for the former provisions which read: "'Service supplier' means a person or entity who provides local exchange telephone service or wireless service to a telephone subscriber."; substituted the present provisions of the first sentence of paragraph (17) for the former provisions which read: "'Telephone subscriber' means a person or entity to whom local exchange telephone service or wireless service, either residential or commercial, is provided and in return for which the person or entity is billed on a monthly basis."; added the present last sentence in paragraph (19); and deleted "local exchange" preceding "telephone service" in paragraph (21).

The 2011 amendment, effective July 1, 2011, substituted "subsection (f)" for "subsection (e)" in subparagraph (18)(C).

The 2012 amendment, effective July 1, 2012, substituted the present provisions of paragraph (12.1) for the former provisions, which read: "'Prepaid wireless service' means any method pursuant to which a customer pays a wireless service provider in advance for a wireless telecommunications connection. Such term shall include, without limitation, calling or usage privileges included with the pur-

chase of a wireless telephone as well as additional calling or usage privileges purchased by any means, including, without limitation, a calling card, a wireless communication, or an Internet transaction."

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, in paragraph (7), the comma following "facility" in the third sentence was deleted.

46-5-123. Creation of 9-1-1 Advisory Committee; selection of members; filling of vacancies; organization; roles and responsibilities.

(a) For the purposes of the development and implementation of a plan for the state-wide emergency 9-1-1 system, there is created the 9-1-1 Advisory Committee to be composed of the director of the agency, who shall serve as chairperson; the director of the Georgia Technology Authority or his or her designee; the commissioner of the department or his or her designee; and 12 other members appointed by the Governor, as follows:

(1) Three members appointed from nominees of the Georgia Municipal Association;

(2) Three members appointed from nominees of the Association County Commissioners of Georgia;

(3) Four members who are experienced in and currently involved in the management of emergency telephone systems; and

(4) Two members who are representatives of the telecommunications industry, one of whom shall be a representative of a wireless service supplier and one of whom shall be a representative of a land based service supplier.

(b) When appointments are made, the associations making nominations pursuant to this Code section shall submit at least three times as many nominees as positions to be filled at that time by nominees of the association.

(c) The appointed members of the committee shall serve at the pleasure of the Governor. Vacancies shall be filled in the same manner as the original appointment.

(d) The committee shall organize itself as it deems appropriate and may elect other officers from among its members.

(e) The committee shall hold meetings at the call of the chairperson; provided, however, that it shall meet at least three times a year. A quorum for transacting business shall be a majority of the members of the committee.

(f) The committee shall be assigned to the agency for administrative purposes only, as prescribed in Code Section 50-4-3.

(g) The committee shall have the following duties and responsibilities:

(1) To make recommendations to the commissioner of the department regarding the recipients of assistance grants provided for under Code Section 46-5-134.2;

(2) To study and evaluate the state-wide provision of 9-1-1 service;

(3) To identify any changes necessary to accomplish more effective and efficient 9-1-1 service across this state;

(4) To identify any changes necessary in the assessment and collection of 9-1-1 fees;

(5) To make recommendations to the agency as to training that should be provided to directors of public safety answering points; and

(6) To provide an annual report which shall include proposed legislation, if any, to the Governor and the General Assembly by December 1 of each year. (Ga. L. 1977, p. 1040, § 4; Ga. L. 1998, p. 1017, § 4; Ga. L. 1999, p. 372, § 4; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, in subsection (a), in the introductory paragraph, substituted "9-1-1" for "'911'" twice, substituted "director of the Georgia Technology Authority" for "commissioner of administrative services", and substituted "12 other members" for "ten other members"; deleted "and" at the end of paragraph (a)(2), substituted "; and" for a period at the end of paragraph (a)(3); and added paragraph (a)(4).

The 2007 amendment, effective July 1, 2007, in subsection (a), deleted "telephone number" following "state-wide emergency", substituted "the agency" for "emergency management", and inserted "or his or her designee; the commissioner of the department"; and added subsections (d) through (g).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, "Code Section" was inserted in paragraph (g)(1).

46-5-124. Guidelines for implementing state-wide emergency 9-1-1 system; training and equipment standards.

(a) The agency shall develop guidelines for implementing a state-wide emergency 9-1-1 system. The guidelines shall provide for:

(1) Steps of action necessary for public agencies to effect the necessary coordination, regulation, and development preliminary to a 9-1-1 system that shall incorporate the requirements of each public service agency in each local government of Georgia;

(2) Identification of mutual aid agreements necessary to effect the 9-1-1 system, including coordination on behalf of the State of Georgia with any federal agency to secure financial assistance or other desirable activities in connection with the receipt of funding that may be provided to communities for the planning, development, or implementation of the 9-1-1 system;

(3) The coordination necessary between local governments planning or developing a 9-1-1 system and other state agencies, the Public Service Commission, all affected utility and telephone companies, wireless service suppliers, and other agencies;

(4) The actions to establish emergency telephone service necessary to meet the requirements for each local government, including law enforcement, fire-fighting, medical, suicide prevention, rescue, or other emergency services; and

(5) The actions to be taken by a local government desiring to provide wireless enhanced 9-1-1 service, including requirements contained in 47 Code of Federal Regulations Section 20.18.

(b) The agency shall be responsible for encouraging and promoting the planning, development, and implementation of local 9-1-1 system plans. The agency shall develop any necessary procedures to be followed by public agencies for implementing and coordinating such plans and shall mediate whenever disputes arise or agreements cannot be reached between the local political jurisdiction and other entities involving the 9-1-1 system.

(c) Notwithstanding any other law to the contrary, no communications officer hired to the staff of a public safety answering point shall be required to complete his or her training pursuant to Code Section 35-8-23 prior to being hired or employed for such position.

(d) The agency shall maintain the registry of wireless service suppliers provided for in Code Section 46-5-124.1. (Ga. L. 1977, p. 1040, § 1; Ga. L. 1984, p. 22, § 46; Ga. L. 1998, p. 1017, § 5; Ga. L. 1999, p. 81, § 46; Ga. L. 1999, p. 873, § 2; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" throughout subsections (a), (b), and (c).

The 2007 amendment, effective July 1, 2007, deleted "telephone number" following "state-wide emergency" in the introductory paragraph of subsection (a); substituted "shall" for "will" in paragraph (a)(1); substituted "service" for "communications" in paragraph (a)(4); and, in subsection (c), deleted the former first two sentences which read: "Subject to the approval of the Governor, the director shall be authorized to promulgate rules and regulations to establish minimum standards relating to training and equipment. Such training standards shall not be inconsistent with the training course or certification required for communications officers under Code Section 35-8-23.", and substituted "public safety answering point" for "' 9-1-1' communications center" near the middle.

46-5-124.1. Service suppliers or Voice over Internet Protocol service suppliers must register certain information with the director; updating information; notices of delinquency.

(a) Any service supplier or Voice over Internet Protocol service supplier doing business in Georgia shall register the following information with the director:

(1) The name, address, and telephone number of the representative of the service supplier or Voice over Internet Protocol service supplier to whom the resolution adopted pursuant to Code Section 46-5-133 or other notification of intent to provide automatic number identification or automatic location identification, or both, of a telephone service connection should be submitted;

(2) The name, address, and telephone number of the representative of the service supplier or Voice over Internet Protocol service supplier with whom a local government must coordinate to implement automatic number identification or automatic location identification, or both, of a telephone service connection;

(3) The counties in Georgia in which the service supplier or Voice over Internet Protocol service supplier is authorized to provide telephone service at the time the filing is made; and

(4) Every corporate name under which the service supplier or Voice over Internet Protocol service supplier is authorized to provide telephone service in Georgia.

(b) After the initial submission by each service supplier or Voice over Internet Protocol service supplier doing business in this state, the information required by subsection (a) of this Code section shall be updated and submitted to the director by the tenth day of January and the tenth day of July of each year or such other semiannual schedule as the director may establish.

(c) The director shall send a notice of delinquency to any service supplier or Voice over Internet Protocol service supplier which fails to comply with subsection (b) of this Code section. Such notice shall be sent by certified mail or statutory overnight delivery. Any service supplier or Voice over Internet Protocol service supplier that fails to register and provide the information required by this Code section within 30 days after receipt of a notice of delinquency shall not be eligible to receive cost recovery funds as provided in subsection (e) of Code Section 46-5-134 until the service supplier or Voice over Internet Protocol service supplier is in compliance with subsection (b) of this Code section. (Code 1981, § 46-5-124.1, enacted by Ga. L. 1999, p. 873, § 3; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2006, p. 72, § 46/SB 465;

Ga. L. 2007, p. 318, § 2/HB 394; Ga. L. 2011, p. 240, § 2/HB 280; Ga. L. 2012, p. 820, § 2/HB 1049.)

The 2005 amendment, effective July 1, 2005, substituted "Any service provider doing business" for "Any wireless service supplier that provides wireless service or is authorized to provide wireless service" at the beginning of subsection (a); deleted "wireless" preceding "service supplier" in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4); inserted "at the time the filing is made" in paragraph (a)(3); rewrote subsection (b), which read: "A wireless service supplier shall notify the director of any change to the information described in subsection (a) of this Code section within 30 days of such change."; and added subsection (c).

The 2006 amendment, effective April 14, 2006, part of an Act to revise, modernize, and correct the Code, substituted "service supplier" for "service provider" once in subsection (a), and three places in subsection (c).

The 2011 amendment, effective July 1, 2011, substituted "telephone service" for "wireless telecommunications" in paragraphs (a)(1) and (a)(2); and substituted "telephone service" for "wireless service" in paragraphs (a)(3) and (a)(4).

The 2012 amendment, effective July 1, 2012, inserted "or Voice over Internet Protocol service supplier" throughout this Code section; and substituted "or Voice over Internet Protocol service supplier that fails" for "which fails" in the third sentence of subsection (c).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, "is" was inserted preceding "in compliance" in the last sentence of subsection (c).

Editor's notes. — Ga. L. 2007, p. 318, § 2, effective July 1, 2007, reenacted this Code section without change.

46-5-125. Formation of multijurisdictional and regional 9-1-1 systems.

Nothing in this part shall be construed to prohibit or discourage the formation of multijurisdictional or regional 9-1-1 systems; and any system established pursuant to this part may include the jurisdiction, or any portion thereof, of more than one public agency. (Ga. L. 1977, p. 1040, § 6; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2006, p. 72, § 46/SB 465; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" in this Code section.

The 2006 amendment, effective April 14, 2006, part of an Act to revise, modernize, and correct the Code, substituted "9-1-1" for "911" in this Code section.

Editor's notes. — Ga. L. 2007, p. 318, § 2, effective July 1, 2007, reenacted this Code section without change.

46-5-126. Cooperation by commission and telephone industry.

The agency shall coordinate its activities with those of the Public Service Commission, which shall encourage the Georgia telephone industry to activate facility modification plans for a timely 9-1-1 implementation. (Ga. L. 1977, p. 1040, § 7; Ga. L. 1998, p. 1017, § 15; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" in this Code section.

Editor's notes. — Ga. L. 2007, p. 318, § 2, effective July 1, 2007, reenacted this Code section without change.

46-5-127. Approval of 9-1-1 systems by agency.

After January 1, 1978, no emergency 9-1-1 system shall be established, and no existing system shall be expanded to provide wireless enhanced 9-1-1 service, without written confirmation by the agency that the local plan conforms to the guidelines and procedures provided for in Code Section 46-5-124. (Ga. L. 1977, p. 1040, § 8; Ga. L. 1998, p. 1017, § 6; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" twice in this Code section.

The 2007 amendment, effective July 1, 2007, deleted "telephone number" preceding "9-1-1 system" near the beginning of this Code section.

46-5-128. Cooperation by public agencies.

All public agencies shall assist the agency in its efforts to carry out the intent of this part; and such agencies shall comply with the guidelines developed pursuant to Code Section 46-5-124 by furnishing a resolution of intent regarding an emergency 9-1-1 system. (Ga. L. 1977, p. 1040, § 9; Ga. L. 1998, p. 1017, § 7; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" in this Code section.

The 2007 amendment, effective July 1, 2007, deleted "telephone number" preceding "9-1-1 system" near the end of this Code section.

46-5-129. Use of 9-1-1 emblem.

The agency may develop a 9-1-1 emblem which may be utilized on marked vehicles used by public safety agencies participating in a local 9-1-1 system. (Ga. L. 1980, p. 699, § 1; Ga. L. 1998, p. 1017, § 8; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" twice in this Code section.

Editor's notes. — Ga. L. 2007, p. 318, § 2, effective July 1, 2007, reenacted this Code section without change.

46-5-130. Federal assistance.

The agency is authorized to apply for and accept federal funding assistance in the development and implementation of a state-wide emergency 9-1-1 system. (Ga. L. 1977, p. 1040, § 10; Ga. L. 1998, p.

1017, § 15; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" in this Code section.

The 2007 amendment, effective July 1, 2007, deleted "telephone number" preceding "9-1-1 system" near the end of this Code section.

46-5-131. Exemptions from liability in operation of 9-1-1 system.

(a) Whether participating in a state-wide emergency 9-1-1 system or an emergency 9-1-1 system serving one or more local governments, neither the state nor any local government of the state nor any emergency 9-1-1 system provider or service supplier or its employees, directors, officers, and agents, except in cases of wanton and willful misconduct or bad faith, shall be liable for death or injury to any person or for damage to property as a result of either developing, adopting, establishing, participating in, implementing, maintaining, or carrying out duties involved in operating the emergency 9-1-1 system or in the identification of the telephone number, address, or name associated with any person accessing an emergency 9-1-1 system.

(b) No local government of the State of Georgia shall be required to release, indemnify, defend, or hold harmless any emergency 9-1-1 system provider from any loss, claim, demand, suit, or other action or any liability whatsoever which arises out of subsection (a) of this Code section, unless the local government agrees or has agreed to assume such obligations. (Code 1981, § 46-5-131, enacted by Ga. L. 1984, p. 652, § 1; Ga. L. 1990, p. 179, § 2; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" throughout this Code section.

The 2007 amendment, effective July 1, 2007, in subsection (a), substituted "or service supplier or" for a comma near the beginning, substituted "any" for "the" near the middle, and substituted "emergency 9-1-1" for "9-1-1 emergency telephone" near the end.

JUDICIAL DECISIONS

No waiver of defense of sovereign and official immunity.

Trial court did not err in dismissing the spouse's wrongful death claim against the county based on sovereign immunity because O.C.G.A. § 46-5-131(a) did not strictly meet the criteria for the statutory wavier of sovereign immunity. Marshall v. McIntosh County, 327 Ga. App. 416, 759 S.E.2d 269 (2014).

Allegations sufficient to support immunity in official but not individual capacity. — While the claim against the director of 911 emergency services in the director's official capacity was properly dismissed, as such a claim was considered a suit against the county, also subject to dismissal based on sovereign immunity, the trial court erred in dismissing the spouse's claim against the director in the

director's individual capacity because the spouse sufficiently alleged a claim of wanton and willful misconduct and bad faith by the director to survive a motion to dismiss. Marshall v. McIntosh County, 327 Ga. App. 416, 759 S.E.2d 269 (2014).

46-5-132. Fees by service supplier.

It shall be unlawful for any service supplier to assess or charge any fee for an emergency call placed on an emergency 9-1-1 system. The prohibition provided for in this Code section shall only apply to actual emergency calls made on such system and shall not apply to nor prohibit any fee assessed or charged for the implementation or enhancement of such system. (Code 1981, § 46-5-132, enacted by Ga. L. 1988, p. 465, § 1; Ga. L. 1998, p. 1017, § 9; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394; Ga. L. 2008, p. 324, § 46/SB 455.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" in this Code section.

The 2007 amendment, effective July 1, 2007, in the first sentence, deleted "wireless" preceding "service supplier", deleted "telephone" preceding "call placed", and substituted "an emergency 9-1-1" for "a 9-1-1 emergency telephone"; and deleted "telephone" following "actual emergency" in the second sentence.

The 2008 amendment, effective May 12, 2008, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

46-5-133. Authority of local government to adopt resolution to impose monthly 9-1-1 charge.

(a) Subject to the provisions of subsection (b) of this Code section, the governing authority of any local government which operates or which contracts for the operation of an emergency 9-1-1 system is authorized to adopt a resolution to impose a monthly 9-1-1 charge upon each telephone service subscribed to by telephone subscribers whose exchange access lines are in the areas served or which would be served by the 9-1-1 service. Subject to the provisions of subsection (b) of this Code section and of subparagraphs (a)(2)(A) and (a)(2)(B) of Code Section 46-5-134, the governing authority of any local government which operates or contracts for the operation of an emergency 9-1-1 system which is capable of providing or provides enhanced 9-1-1 service to persons or entities with a wireless telecommunications connection, excluding a military base, is authorized to adopt a resolution to impose a monthly wireless enhanced 9-1-1 charge upon each wireless telecommunications connection, other than a connection for prepaid wireless service, subscribed to by telephone subscribers whose place of primary use is within the geographic area that is served by the local government or that would be served by the local government for the purpose of such an emergency 9-1-1 system. Such resolution, or any amendment to such resolution, shall fix a date on which such resolution and the imposition and collection of the 9-1-1 charge or wireless enhanced 9-1-1 charge, as

provided in the resolution, shall become effective; provided, however, that such effective date shall be at least 120 days following the date of the adoption of such resolution or any amendment to such resolution by the local government. The 9-1-1 charge must be uniform, may not vary according to the type of telephone service used, and may be billed on a monthly or quarterly basis. The wireless enhanced 9-1-1 charge must be uniform, not vary according to the type of wireless telecommunications connection used, and may be billed on a monthly or quarterly basis.

(a.1) Any 9-1-1 charges shall be imposed only on the telephone subscriber of the entity that provides telephone service directly to the telephone subscriber. If a service supplier obtains its connectivity to the public switched telephone network or the public safety answering point through another service supplier, that other service supplier shall not be subject to any 9-1-1 charges with respect to the affected services.

(b)(1) Except as provided in paragraph (2) of this subsection, no local government shall be authorized to exercise the power conferred by this Code section unless either:

(A) A majority of the voters residing in that political subdivision who vote in an election called for such purpose shall vote to authorize the implementation of this Code section. Such election shall be called and conducted as other special elections are called and conducted in such local government when requested by such local government authority. The question or questions on the ballot shall be as prescribed by the election superintendent, provided that separate questions may be posed regarding implementation of a 9-1-1 charge and of a wireless enhanced 9-1-1 charge; or

(B) After a public hearing held upon not less than ten days' public notice.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to a local government if the governing authority of such local government has on or before March 7, 1988, contracted with a telephone service supplier for the purchase or operation, or both, of a telephone 9-1-1 system.

(c) On and after January 1, 1999, no monthly 9-1-1 charge provided for in this Code section shall be imposed or continue to be imposed unless each public safety answering point funded in whole or in part from such charges is in compliance with Code Section 36-60-19, relating to required TDD training for communications officers. (Code 1981, § 46-5-133, enacted by Ga. L. 1988, p. 1984, § 2; Ga. L. 1990, p. 179, § 3; Ga. L. 1998, p. 540, § 3; Ga. L. 1998, p. 1017, § 10; Ga. L. 1999, p. 81, § 46; Ga. L. 1999, p. 873, § 4; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" throughout this Code section and substituted "place of primary use" for "billing address" in the second sentence in subsection (a).

The 2007 amendment, effective July 1, 2007, in subsection (a), substituted "telephone service" for "exchange access facility" in the first and fourth sentences and inserted ", other than a connection for prepaid wireless service," in the second sentence; added subsection (a.1); deleted "local exchange" preceding "telephone" twice in paragraph (b)(2); and, near the middle of subsection (c), substituted "shall" for "may" and substituted "public safety answering point" for "dispatch center".

46-5-134. Billing of subscribers; liability of subscriber for service charge; taxes on service; establishment of Emergency Telephone System Fund; records; use of funds.

(a)(1)(A) The telephone subscriber of any telephone service may be billed for the monthly 9-1-1 charge, if any, imposed with respect to such telephone service by the service supplier. Such 9-1-1 charge may not exceed $1.50 per month per telephone service provided to the telephone subscriber. In the event that any telephone service supplier, due to its normal billing practices, is unable to charge differing amounts set by each local government as the 9-1-1 charge, such telephone service supplier shall collect on behalf of local governments that have authorized a 9-1-1 charge $1.50 per month per telephone service provided to the telephone subscribers to whom it provides telephone service in every area served by the emergency 9-1-1 system.

(B) All telephone services billed to federal, state, or local governments shall be exempt from the 9-1-1 charge. Each service supplier shall, on behalf of the local government, collect the 9-1-1 charge from those telephone subscribers to whom it provides telephone service in the area served by the emergency 9-1-1 system. As part of its normal billing process, the service supplier shall collect the 9-1-1 charge for each month a telephone service is in service, and it shall list the 9-1-1 charge as a separate entry on each bill. If a service supplier receives a partial payment for a bill from a telephone subscriber, the service supplier shall apply the payment against the amount the telephone subscriber owes the service supplier first.

(C) This paragraph shall not apply to wireless service or prepaid wireless service or the telephone subscribers or service suppliers of such services.

(2)(A) If the governing authority of a local government operates or contracts for the operation of an emergency 9-1-1 system which is capable of providing or provides automatic number identification of a wireless telecommunications connection and the location of the

base station or cell site which receives a 9-1-1 call from a wireless telecommunications connection, the subscriber of a wireless telecommunications connection whose billing address is within the geographic area that is served by the local government or that would be served by the local government for the purpose of such an emergency 9-1-1 system may be billed for the monthly wireless enhanced 9-1-1 charge, if any, imposed with respect to that connection by the wireless service supplier. Such wireless enhanced 9-1-1 charge may not exceed the amount of the monthly 9-1-1 charge imposed upon other telephone subscribers pursuant to paragraph (1) of this subsection nor exceed $1.00 per month per wireless telecommunications connection provided to the telephone subscriber.

(B) If the governing authority of a local government operates or contracts for the operation of an emergency 9-1-1 system which is capable of providing or provides automatic number identification and automatic location identification of a wireless telecommunications connection, the subscriber of a wireless telecommunications connection whose place of primary use is within the geographic area that is served by the local government or that would be served by the local government for the purpose of such an emergency 9-1-1 system may be billed for the monthly wireless enhanced 9-1-1 charge, if any, imposed with respect to that connection by the wireless service supplier. Such wireless enhanced 9-1-1 charge may not exceed the amount of the monthly 9-1-1 charge imposed upon other telephone subscribers pursuant to paragraph (1) of this subsection and shall be imposed on a monthly basis for each wireless telecommunications connection provided to the telephone subscriber.

(C) All wireless telecommunications connections billed to federal, state, or local governments shall be exempt from the wireless enhanced 9-1-1 charge. Each wireless service supplier shall, on behalf of the local government, collect the wireless enhanced 9-1-1 charge from those telephone subscribers whose place of primary use is within the geographic area that is served by the local government or that would be served by the local government for the purpose of such an emergency 9-1-1 system. As part of its normal billing process, the wireless service supplier shall collect the wireless enhanced 9-1-1 charge for each month a wireless telecommunications connection is in service, and it shall list the wireless enhanced 9-1-1 charge as a separate entry on each bill. If a wireless service supplier receives partial payment for a bill from a telephone subscriber, the wireless service supplier shall apply the payment against the amount the telephone subscriber owes the wireless service supplier first.

(D) Notwithstanding the foregoing, the application of any 9-1-1 service charge with respect to a mobile telecommunications service, as defined in 4 U.S.C. Section 124(7), shall be governed by the provisions of Code Section 48-8-6.

(E) This paragraph shall not apply to prepaid wireless service or the telephone subscribers or service suppliers of such service.

(b) Every telephone subscriber in the area served by the emergency 9-1-1 system shall be liable for the 9-1-1 charges and the wireless enhanced 9-1-1 charges imposed under this Code section until it has been paid to the service supplier. A service supplier shall have no obligation to take any legal action to enforce the collection of the 9-1-1 charge or wireless enhanced 9-1-1 charge. The service supplier shall provide the governing authority within 60 days with the name and address of each subscriber who has refused to pay the 9-1-1 charge or wireless enhanced 9-1-1 charge after such 9-1-1 charge or wireless enhanced 9-1-1 charge has become due. A collection action may be initiated by the local government that imposed the charges, and reasonable costs and attorneys' fees associated with that collection action may be awarded to the local government collecting the 9-1-1 charge or wireless enhanced 9-1-1 charge.

(c) The local government contracting for the operation of an emergency 9-1-1 system shall remain ultimately responsible to the service supplier for all emergency 9-1-1 system installation, service, equipment, operation, and maintenance charges owed to the service supplier. Any taxes due on emergency 9-1-1 system service provided by the service supplier will be billed to the local government subscribing to the service. State and local taxes do not apply to the 9-1-1 charge or wireless enhanced 9-1-1 charge billed to telephone subscribers under this Code section.

(d)(1) Each service supplier that collects 9-1-1 charges or wireless enhanced 9-1-1 charges on behalf of the local government is entitled to retain as an administrative fee an amount equal to 3 percent of the gross 9-1-1 or wireless enhanced 9-1-1 charge receipts to be remitted to the local government; provided, however, that such amount shall not exceed 3¢ for every dollar so remitted. The remaining amount shall be due quarterly to the local government and shall be remitted to it no later than 60 days after the close of a calendar quarter.

(2) The 9-1-1 charges and the wireless enhanced 9-1-1 charges collected by the service supplier shall be deposited and accounted for in a separate restricted revenue fund known as the Emergency Telephone System Fund maintained by the local government. The local government may invest the money in the fund in the same manner that other moneys of the local government may be invested

and any income earned from such investment shall be deposited into the Emergency Telephone System Fund.

(3) On or before July 1, 2005, any funds that may have been deposited in a separate restricted wireless reserve account required by this Code section prior to such date shall be transferred to the Emergency Telephone System Fund required by paragraph (2) of this subsection.

(4) The local government may on an annual basis, and at its expense, audit or cause to be audited the books and records of service suppliers with respect to the collection and remittance of 9-1-1 charges.

(5) Such monthly 9-1-1 charges and wireless enhanced 9-1-1 charges may be reduced at any time by the governing authority by resolution; provided, however, that said governing authority shall be required to reduce such monthly 9-1-1 charge or wireless enhanced 9-1-1 charge at any time the projected revenues from 9-1-1 charges or wireless enhanced 9-1-1 charges will cause the unexpended revenues in the Emergency Telephone System Fund at the end of the fiscal year to exceed by one and one-half times the unexpended revenues in such fund at the end of the immediately preceding fiscal year or at any time the unexpended revenues in such fund at the end of the fiscal year exceed by one and one-half times the unexpended revenues in such fund at the end of the immediately preceding fiscal year. Such reduction in the 9-1-1 charge or wireless enhanced 9-1-1 charge shall be in an amount which will avert the accumulation of revenues in such fund at the end of the fiscal year which will exceed by one and one-half times the amount of revenues in the fund at the end of the immediately preceding fiscal year.

(e)(1) A wireless service supplier may recover its costs expended on the implementation and provision of wireless enhanced 9-1-1 services to subscribers in an amount not to exceed 30¢ of each 9-1-1 charge collected from a place of primary use that is within the geographic area that is served by the local government or would be served by the local government for the purpose of such emergency 9-1-1 system; provided, however, that such amount may be increased to 45¢ upon implementation of step two of the state plan governing 9-1-1 enhanced communications as provided in subsection (g) of this Code section. Such cost recovery amount shall be based on the actual cost incurred by the wireless service supplier in providing wireless enhanced 9-1-1 services.

(2) A wireless service supplier shall not be authorized to recover any costs under paragraph (1) of this subsection with respect to any prepaid wireless services.

(f)(1) In addition to cost recovery as provided in subsection (e) of this Code section, money from the Emergency Telephone System Fund shall be used only to pay for:

(A) The lease, purchase, or maintenance of emergency telephone equipment, including necessary computer hardware, software, and data base provisioning; addressing; and nonrecurring costs of establishing a 9-1-1 system;

(B) The rates associated with the service supplier's 9-1-1 service and other service supplier's recurring charges;

(C) The actual cost, according to generally accepted accounting principles, of salaries and employee benefits incurred by the local government for employees hired by the local government solely for the operation and maintenance of the emergency 9-1-1 system and employees who work as directors as that term is defined in Code Section 46-5-138.2, whether such employee benefits are purchased directly from a third-party insurance carrier, funded by the local government's self-funding risk program, or funded by the local government's participation in a group self-insurance fund. As used in this paragraph, the term "employee benefits" means health benefits, disability benefits, death benefits, accidental death and dismemberment benefits, pension benefits, retirement benefits, workers' compensation, and such other benefits as the local government may provide. Said term shall also include any post-employment benefits the local government may provide;

(D) The actual cost, according to generally accepted accounting principles, of training employees hired by the local government solely for the operation and maintenance of the emergency 9-1-1 system and employees who work as directors as that term is defined in Code Section 46-5-138.2;

(E) Office supplies of the public safety answering points used directly in providing emergency 9-1-1 system services;

(F) The cost of leasing or purchasing a building used as a public safety answering point. Moneys from the fund shall not be used for the construction or lease of an emergency 9-1-1 system building until the local government has completed its street addressing plan;

(G) The lease, purchase, or maintenance of computer hardware and software used at a public safety answering point, including computer-assisted dispatch systems and automatic vehicle location systems;

(H) Supplies directly related to providing emergency 9-1-1 system services, including the cost of printing emergency 9-1-1 system public education materials; and

(I) The lease, purchase, or maintenance of logging recorders used at a public safety answering point to record telephone and radio traffic.

(2)(A) In addition to cost recovery as provided in subsection (e) of this Code section, money from the Emergency Telephone System Fund may be used to pay for those purposes set forth in subparagraph (B) of this paragraph, if:

(i) The local government's 9-1-1 system provides enhanced 9-1-1 service;

(ii) The revenues from the 9-1-1 charges or wireless enhanced 9-1-1 charges in the local government's Emergency Telephone System Fund at the end of any fiscal year shall be projected to exceed the cost of providing enhanced 9-1-1 services as authorized in subparagraphs (A) through (I) of paragraph (1) of this subsection and the cost of providing enhanced 9-1-1 services as authorized in subparagraphs (A) through (I) of paragraph (1) of this subsection includes a reserve amount equal to at least 10 percent of the previous year's expenditures; and

(iii) Funds for such purposes are distributed pursuant to an intergovernmental agreement between the local governments whose citizens are served by the emergency 9-1-1 system proportionately by population as determined by the most recent decennial census published by the United States Bureau of the Census at the time such agreement is entered into.

(B) Pursuant to subparagraph (A) of this paragraph, the Emergency Telephone System Fund may be used to pay for:

(i) The actual cost, according to generally accepted accounting principles, of insurance purchased by the local government to insure against the risks and liability in the operation and maintenance of the emergency 9-1-1 system on behalf of the local government or on behalf of employees hired by the local government solely for the operation and maintenance of the emergency 9-1-1 system and employees who work as directors as that term is defined in Code Section 46-5-138.2, whether such insurance is purchased directly from a third-party insurance carrier, funded by the local government's self-funding risk program, or funded by the local government's participation in a group self-insurance fund. As used in this division, the term "cost of insurance" shall include, but shall not be limited to, any insurance premiums, unit fees, and broker fees paid for insurance obtained by the local government;

(ii) The lease, purchase, or maintenance of a mobile communications vehicle and equipment, if the primary purpose and

designation of such vehicle is to function as a backup 9-1-1 system center;

(iii) The allocation of indirect costs associated with supporting the 9-1-1 system center and operations as identified and outlined in an indirect cost allocation plan approved by the local governing authority that is consistent with the costs allocated within the local government to both governmental and business-type activities;

(iv) The lease, purchase, or maintenance of mobile public safety voice and data equipment, geo-targeted text messaging alert systems, or towers necessary to carry out the function of 9-1-1 system operations; and

(v) The lease, purchase, or maintenance of public safety voice and data communications systems located in the 9-1-1 system facility that further the legislative intent of providing the highest level of emergency response service on a local, regional, and state-wide basis, including equipment and associated hardware and software that support the use of public safety wireless voice and data communication systems.

(g) All 9-1-1 systems and communication systems provided pursuant to this part shall conform to the two-step state plan governing enhanced 9-1-1 service as follows:

(1) In step one, the governing authority of a local government shall operate or contract for the operation of an emergency 9-1-1 system that provides or is capable of providing automatic number identification of a wireless telecommunications connection and the location of the base station or cell site which received a 9-1-1 call from a wireless telecommunications connection; and

(2) In step two, the governing authority of a local government shall operate or contract for the operation of an emergency 9-1-1 system that provides or is capable of providing automatic number identification and automatic location of a wireless telecommunications connection.

(h) The local government may contract with a service supplier for any term negotiated by the service supplier and the local government for an emergency 9-1-1 system and may make payments from the Emergency Telephone System Fund to provide any payments required by the contract, subject to the limitations provided by subsection (e) of this Code section.

(i) The service supplier shall maintain records of the amount of the 9-1-1 charges and wireless enhanced 9-1-1 charges collected for a period of at least three years from the date of collection. The local government

may, at its expense, require an annual audit of the service supplier's books and records with respect to the collection and remittance of the 9-1-1 charges and wireless enhanced 9-1-1 charges.

(j) In order to provide additional funding for the local government for emergency 9-1-1 system purposes, the local government may receive federal, state, municipal, or private funds which shall be expended for the purposes of this part.

(k) Subject to the provisions of Code Section 46-5-133, a telephone subscriber may be billed for the monthly 9-1-1 charge or wireless enhanced 9-1-1 charge for up to 18 months in advance of the date on which the 9-1-1 system becomes fully operational.

(l) In the event the local government is a federal military base providing emergency services to telephone subscribers residing on the base, a telephone service supplier is authorized to apply the 9-1-1 charges collected to the bill for 9-1-1 service rather than remit the funds to an Emergency Telephone System Fund.

(m)(1) Any local government collecting or expending any 9-1-1 charges or wireless enhanced 9-1-1 charges in any fiscal year beginning on or after July 1, 2005, shall document the amount of funds collected and expended from such charges. Any local government collecting or expending 9-1-1 funds shall certify in its audit, as required under Code Section 36-81-7, that 9-1-1 funds were expended in compliance with the expenditure requirements of this Code section.

(2) Any local government which makes expenditures not in compliance with this Code section may be held liable for pro rata reimbursement to telephone and wireless telecommunications subscribers of amounts improperly expended. Such liability may be established in judicial proceedings by any aggrieved party. The noncompliant local government shall be solely financially responsible for the reimbursement and for any costs associated with the reimbursement. Such reimbursement shall be accomplished by the service suppliers abating the imposition of the 9-1-1 charges and wireless enhanced 9-1-1 charges until such abatement equals the total amount of the rebate. (Code 1981, § 46-5-134, enacted by Ga. L. 1990, p. 179, § 4; Ga. L. 1991, p. 93, § 2; Ga. L. 1991, p. 94, § 46; Ga. L. 1993, p. 1368, § 2; Ga. L. 1998, p. 1017, § 11; Ga. L. 1999, p. 81, § 46; Ga. L. 1999, p. 466, § 1; Ga. L. 1999, p. 873, § 5; Ga. L. 2000, p. 136, § 46; Ga. L. 2002, p. 970, § 3; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2006, p. 72, § 46/SB 465; Ga. L. 2007, p. 318, § 2/HB 394; Ga. L. 2011, p. 240, § 3/HB 280; Ga. L. 2011, p. 563, § 1.1/SB 156; Ga. L. 2012, p. 775, § 46/HB 942; Ga. L. 2012, p. 820, § 3/HB 1049.)

The 2005 amendment, effective July 1, 2005, rewrote this Code section.

The 2006 amendment, effective April 14, 2006, part of an Act to revise, modernize, and correct the Code, substituted "service suppliers" for "service providers" in the last sentence of paragraph (m)(2).

The 2007 amendment, effective July 1, 2007, rewrote subsection (a); inserted "charges" and "charge" throughout the Code section; deleted "the" preceding "said" in the first sentence of paragraph (d)(5); in subsection (f), added "or who work as directors as that term is defined in Code Section 46-5-138.2" at the end of paragraph (f)(3), and inserted "system" near the end of paragraph (f)(7); substituted "enhanced 9-1-1 service" for "9-1-1 enhanced communications" near the end of the introductory paragraph of subsection (g); and substituted "system" for "service" near the end of subsection (k).

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, designated the existing provisions of subsection (f) as paragraph (f)(1); redesignated former paragraphs (f)(1) through (f)(3) as present subparagraphs (f)(1)(A) through (f)(1)(C), respectively; substituted the present provisions of subparagraph (f)(1)(C) for the former provisions, which read: "The actual cost of salaries, including benefits, of employees hired by the local government solely for the operation and maintenance of the emergency 9-1-1 system and the actual cost of training such of those employees who work as dispatchers or who work as directors as that term is defined in Code Section 46-5-138.2;"; added subparagraph (f)(1)(D); redesignated former paragraphs (f)(4) through (f)(8) as present subparagraphs (f)(1)(E) through (f)(1)(I), respectively; substituted "shall not" for "cannot" in the second sentence of subparagraph (f)(1)(F); added "and automatic vehicle location systems" at the end of subparagraph (f)(1)(G); and added paragraph (f)(2). The second 2011 amendment, effective July 1, 2011, substituted the present provisions of paragraph (m)(1), for the former provisions, which read: "Any local government collecting or expending any 9-1-1 charges or wireless enhanced 9-1-1 charges in any fiscal year beginning on or after July 1, 2005, shall file an annual report of its collections and expenditures in conjunction with the annual audit required under Code Section 36-81-7. The form shall be designed by the state auditor and shall be distributed to local governments administering such funds. The annual report shall require certification by the recipient local government and by the local government auditor that funds were expended in compliance with the expenditure requirements of this Code section."

The 2012 amendments. — The first 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised language and punctuation in this Code section; substituted "maintenance of the emergency 9-1-1 system" for "maintenance of emergency 9-1-1 system" in subparagraph (f)(1)(D); and substituted "shall certify in its audit" for "shall certify in their audit" in paragraph (m)(1). The second 2012 amendment, effective July 1, 2012, designated the existing provisions of subsection (e) as paragraph (e)(1) and added paragraph (e)(2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, "by" was inserted preceding "the local government" in the last sentence of subsection (b).

46-5-134.1. Counties where the governing authorities of more than one local government have adopted a resolution to impose an enhanced 9-1-1 charge.

(a) This Code section shall apply in counties where the governing authorities of more than one local government have adopted a resolution to impose a 9-1-1 charge in accordance with the provisions of subsection (a) of Code Section 46-5-133 and notwithstanding any contrary provision of Code Section 46-5-133 or 46-5-134.

(b) A wireless service supplier may certify to any of the governing authorities described in subsection (a) of this Code section that the wireless service supplier is unable to determine whether the billing addresses of its subscribers are within the geographic area that is served by such local government. Upon such certification, the wireless service supplier shall be authorized to collect the 9-1-1 charge for wireless enhanced 9-1-1 services from any of its subscribers whose billing address is within the county and is within an area that is as close as reasonably possible to the geographic area that is served by such local government. The wireless service supplier shall notify such subscribers that if such subscriber's billing address is not within the geographic area served by such local government, such subscriber is not obligated to pay the 9-1-1 charge for wireless enhanced 9-1-1 service.

(c) Unless otherwise provided in an agreement among the governing authorities described in subsection (a) of this Code section, the charges collected by a wireless service supplier pursuant to this Code section shall be remitted to such governing authorities based upon the number of calls from wireless telecommunications connections that each such individual local government receives and counts relative to the total number of calls from wireless telecommunications connections that are received and counted by all of such local governments.

(d) The authority granted to a wireless service supplier pursuant to this Code section shall terminate:

(1) On the date that the wireless service supplier certifies to a governing authority described in subsection (a) of this Code section that the wireless service supplier is able to determine whether the billing addresses of its subscribers are within the geographic area that is served by such governing authority; or

(2) On the date which is 180 days from the date that any of its subscribers were first billed under this Code section, whichever is earlier.

Upon termination of such authority, the wireless service supplier shall collect the 9-1-1 charge for wireless enhanced 9-1-1 service as provided in Code Section 46-5-134. (Code 1981, § 46-5-134.1, enacted by Ga. L. 1999, p. 873, § 6; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394; Ga. L. 2010, p. 878, § 46/HB 1387.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" four times in subsections (a), (b), and (d).

The 2007 amendment, effective July 1, 2007, deleted "wireless enhanced" following "a resolution to impose a" in subsection (a); in subsection (b), in the second sentence, inserted "9-1-1 charge for" and substituted "services" for "charge", and substituted "service" for "charge" at the end of the third sentence; and, in subsection (d), added a colon at the end of the introductory paragraph, and substituted "On" for "on" at the beginning of paragraphs (d)(1) and (d)(2).

The 2010 amendment, effective June

3, 2010, part of an Act to revise, modernize, and correct the Code, deleted "charge" following "enhanced 9-1-1" in the undesignated language at the end of subsection (d).

46-5-134.2. Prepaid wireless 9-1-1 charge; definitions; imposition of fee by localities; collection and remission of charges; distribution of funds.

(a) As used in this Code section, the term:

(1) "Commissioner" means the state revenue commissioner.

(2) "Consumer" means a person who purchases prepaid wireless service in a retail transaction.

(3) "Department" means the Department of Revenue.

(4) "Prepaid wireless 9-1-1 charge" means the charge that is required to be collected by a seller from a consumer in the amount established under subsection (b) of this Code section.

(5) Reserved.

(6) "Provider" means a person that provides prepaid wireless service pursuant to a license issued by the Federal Communications Commission.

(7) "Retail transaction" means the purchase of prepaid wireless service from a seller for any purpose other than resale.

(8) "Seller" means a person who sells prepaid wireless service to another person.

(9) "Wireless telecommunications service" means commercial mobile radio service as defined by 47 C.F.R. Section 20.3, as amended.

(b)(1) Counties and municipalities that operate a 9-1-1 public safety answering point, including counties and municipalities that operate multijurisdictional or regional 9-1-1 systems or have created a joint authority pursuant to Code Section 46-5-138, are authorized to impose by ordinance or resolution a prepaid wireless 9-1-1 charge in the amount of 75¢ per retail transaction. Imposition of the charge authorized by this Code section by a county or municipality shall be contingent upon compliance with the requirements of paragraph (1) of subsection (j) of this Code section.

(2) Where a county or municipality that operates a 9-1-1 public safety answering point fails to comply with the requirements of paragraph (1) of subsection (j) of this Code section by December 31, 2011, on and after that date, the prepaid wireless 9-1-1 charge authorized by paragraph (1) of this subsection shall be imposed

within the jurisdiction of such counties and municipalities as a state fee for state purposes.

(c) Where a county or municipality imposes a prepaid wireless 9-1-1 charge as authorized by paragraph (1) of subsection (b) of this Code section, or the prepaid wireless 9-1-1 charge is imposed by the State of Georgia by paragraph (2) of subsection (b) of this Code section, the prepaid wireless 9-1-1 charge shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless 9-1-1 charge shall be either separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller or otherwise disclosed to the consumer.

(d) For the purposes of subsection (c) of this Code section, a retail transaction that is effected in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for purposes of a prepaid wireless calling service as provided in paragraph (3) of subsection (e) of Code Section 48-8-77.

(e) The prepaid wireless 9-1-1 charge shall be the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless 9-1-1 charges that the seller collects from consumers as provided in this Code section, including all such charges that the seller is deemed to collect where the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

(f) The amount of the prepaid wireless 9-1-1 charge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(g)(1) If a minimal amount of prepaid wireless service is sold with a prepaid wireless device for a single, nonitemized price, then the seller may elect not to apply the amount specified in subsection (b) of this Code section to such transaction.

(2) If a minimal amount of prepaid wireless service is separately priced and sold as part of a single retail transaction that does not contain a prepaid wireless device or another prepaid wireless service, then the seller may elect not to apply the amount specified in subsection (b) of this Code section to such transaction.

(3) For purposes of this subsection, the term "minimal" means an amount of service denominated as ten minutes or less or $5.00 or less.

(h) Prepaid wireless 9-1-1 charges collected by sellers shall be remitted to the commissioner at the times and in the manner provided by Chapter 8 of Title 48 with respect to the sales and use tax imposed on prepaid wireless calling service. The commissioner shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to the sale of prepaid wireless calling service under Chapter 8 of Title 48. Audit and appeal procedures applicable under Chapter 8 of Title 48 shall apply to the prepaid wireless 9-1-1 charge. The commissioner shall establish procedures by which a seller of prepaid wireless service may document that a sale is not a retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions under Chapter 8 of Title 48. Nothing in this Code section shall authorize the commissioner to require that sellers of prepaid wireless services identify, report, or specify the jurisdiction within which the retail sale of such services occurred.

(i) A seller shall be permitted to deduct and retain 3 percent of prepaid wireless 9-1-1 charges that are collected by the seller from consumers.

(j) Prepaid wireless 9-1-1 charges remitted to the commissioner as provided in this Code section shall be distributed to counties, municipalities, and the State of Georgia as follows:

(1) On or before December 31 of the year prior to the first year that the prepaid wireless 9-1-1 charge is imposed, each county and municipal corporation levying the prepaid wireless 9-1-1 charge, including counties and municipalities levying the prepaid wireless 9-1-1 charge that operate multijurisdictional or regional 9-1-1 systems or have created a joint authority pursuant to Code Section 46-5-138, shall file with the commissioner a certified copy of the pertinent parts of all ordinances and resolutions and amendments thereto which levy the prepaid wireless 9-1-1 charge authorized by this Code section. The ordinance or resolution specified herein shall specify an effective date of January 1, 2012, and impose a prepaid wireless 9-1-1 charge in the amount specified in paragraph (1) of subsection (b) of this Code section. The filing required by this paragraph shall be a condition of the collection of the prepaid wireless 9-1-1 charge within any county or municipality;

(2)(A) Each county or municipality operating a public safety answering point that has levied the prepaid wireless 9-1-1 charge authorized by this Code section and complied with the filing requirement of paragraph (1) of this subsection shall receive an amount calculated by multiplying the total amount remitted to the commissioner during the 12 month period ending on June 30 times a fraction, the numerator of which is the population of the juris-

diction or jurisdictions operating the public safety answering point and the denominator of which is the total population of this state. An amount calculated by multiplying the total amount remitted to the commissioner during the 12 month period ending on June 30 times a fraction, the numerator of which is the total population of any jurisdiction or jurisdictions operating public safety answering points that have not complied with the filing requirement of paragraph (1) of this subsection and the denominator of which is the total population of this state, shall be deposited as provided in paragraph (5) of this subsection.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, the initial distribution shall be calculated using the total amount remitted to the commissioner during the six-month period beginning January 1, 2012, and ending June 30, 2012.

(C) For the purposes of this paragraph, population shall be measured by the United States decennial census of 2010 or any future such census plus any corrections or revisions contained in official statements by the United States Bureau of the Census made prior to the first day of September immediately preceding the distribution of the proceeds of such charges by the commissioner and any official census data received by the commissioner from the United States Bureau of the Census or its successor agency pertaining to any newly incorporated municipality. Such corrections, revisions, or additional data shall be certified to the commissioner by the Office of Planning and Budget on or before August 31 of each year;

(3) Funds shall be distributed annually on or before October 15 of each year. Such distribution shall include any delinquent charges actually collected by the commissioner for a previous fiscal year which have not been previously distributed;

(4) Prior to calculating the distributions to county and municipal governments as provided in this subsection, the commissioner shall subtract an amount, not to exceed 2 percent of remitted charges, to defray the cost of administering and distributing funds from the prepaid wireless 9-1-1 charge. Such amount shall be paid into the general fund of the state treasury;

(5) Funds distributed to a county or municipality pursuant to this Code section shall be deposited and accounted for in a separate restricted revenue fund known as the Emergency Telephone System Fund, maintained by the local government pursuant to paragraph (2) of subsection (d) of Code Section 46-5-134. The commissioner shall deposit all funds received pursuant to paragraph (2) of subsection (b) of this Code section, other than the funds received pursuant to

paragraph (4) of this subsection, into the general fund of the state treasury in compliance with Article 4 of Chapter 12 of Title 45, the "Budget Act." It is the intention of the General Assembly, subject to the appropriation process, that an amount equal to the amount deposited into the general fund of the state treasury as provided in this paragraph be appropriated each year to a program of state grants to counties and municipalities administered by the department for the purpose of supporting the operations of public safety answering points in the improvement of 9-1-1 service delivery. The department shall promulgate rules and regulations for the administration of the 9-1-1 grant program; and

(6) Notwithstanding a county's or municipality's failure to comply with the filing requirement of paragraph (1) of this subsection prior to January 1, 2012, a county or municipality that subsequently meets such filing requirements prior to January 1 of any subsequent year shall become eligible to participate in the next succeeding distribution of proceeds pursuant to subparagraph (A) of paragraph (2) of this subsection.

(k)(1) No provider or seller of prepaid wireless service shall be liable for damages to any person resulting from or incurred in connection with the provision of, or failure to provide, 9-1-1 or enhanced 9-1-1 service, or for identifying, or failing to identify, the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access 9-1-1 or enhanced 9-1-1 service.

(2) No provider or seller of prepaid wireless service shall be liable for damages to any person resulting from or incurred in connection with the provision of any lawful assistance to any investigative or law enforcement officer of the United States, this or any other state, or any political subdivision of this or any other state in connection with any lawful investigation or other law enforcement activity by such law enforcement officer.

(3) In addition to the liability provisions of paragraphs (1) and (2) of this subsection, the provisions of Code Section 46-5-135 shall apply to sellers and providers of prepaid wireless service.

(l) The prepaid wireless 9-1-1 charge authorized by this Code section shall be the only 9-1-1 funding obligation imposed with respect to prepaid wireless service in this state, and no tax, fee, surcharge, or other charge shall be imposed by this state, any political subdivision of this state, or any intergovernmental agency for 9-1-1 funding purposes upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless service. (Code 1981, § 46-5-134.2, enacted by Ga. L. 2011, p. 393, § 3/HB 256; Ga. L. 2011, p. 563, § 3/SB 156; Ga. L. 2012, p. 775, § 46/HB 942; Ga. L. 2012, p. 820, § 4/HB 1049.)

Effective date. — This Code section became effective January 1, 2012.

The 2012 amendments. — The first 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "47 C.F.R. Section 20.3" for "Section 20.3 of Title 47 of the Code of Federal Regulations" in paragraph (a)(9); substituted "75¢" for "75 cents" in paragraph (b)(1); and revised punctuation in subsection (g). The second 2012 amendment, effective July 1, 2012, deleted "telecommunications" following "prepaid wireless" throughout this Code section; substituted "Reserved" for the former provisions of paragraph (a)(5), which read: "'Prepaid wireless telecommunications service' has the same meaning as prepaid wireless service as such term is defined in Code Section 46-5-122"; substituted "47 C.F.R. Section 20.3" for "Section 20.3 of Title 47 of the Code of Federal Regulations" in paragraph (a)(9); in paragraph (b)(1), in the first sentence, substituted "75¢" for "75 cents", and, in the second sentence, substituted "charge authorized" for "fee authorized" and substituted "shall be contingent" for "is contingent"; inserted the first and second occurrences of "prepaid wireless" in the first and second sentences of subsection (c); designated the existing first sentence of subsection (g) as paragraph (g)(1), added paragraph (g)(2), and designated the former second sentence of subsection (g) as present paragraph (g)(3); substituted "wireless services" for "wireless calling services" in the last sentence of subsection (h); in paragraph (j)(1), substituted "prepaid wireless 9-1-1 charge" for "fee" throughout, deleted "the" following "On or before" near the beginning of the first sentence and substituted a semicolon for a period at the end of the last sentence; in subparagraph (j)(2)(A), inserted "on" in the first and second sentences, and substituted "this state" for "the state" near the end of the first sentence; substituted a semicolon for a period at the end of subparagraph (j)(2(C) and paragraphs (j)(3) and (j)(4); and, in paragraph (j)(5), inserted "to" preceding "paragraph (4)" in the second sentence and substituted "; and" for a period at the end of the last sentence.

Editor's notes. — Ga. L. 2011, p. 393, § 4 and Ga. L. 2011, p. 563, § 4, not codified by the General Assembly, provide, in part, that those Acts shall become effective for local administrative purposes on May 12, 2011, and shall become effective for all purposes on January 1, 2012. The Acts further provide that in no event shall a prepaid wireless 9-1-1 fee and charge be imposed prior to January 1, 2012.

Ga. L. 2011, p. 393, § 2, and Ga. L. 2011, p. 563, § 2, both repealed former Code Section 46-5-134.2, relating to 9-1-1 charges for prepaid wireless services, and enacted identical versions of the present Code section. The former Code section was based on Code 1981, § 46-5-134.2, enacted by Ga. L. 2007, p. 318, § 2/HB 394.

46-5-135. Liability of service supplier in civil action.

A service supplier, including any company providing telephone services and its employees, directors, officers, and agents, is not liable for any damages in a civil action for injuries, death, or loss to persons or property incurred by any person as a result of any act or omission of a service supplier or any of its employees, directors, officers, or agents, except for willful or wanton misconduct, either in connection with developing, adopting, implementing, maintaining, or operating any emergency 9-1-1 system or in the identification of the telephone number, address, or name associated with any person accessing an emergency 9-1-1 system. (Code 1981, § 46-5-135, enacted by Ga. L. 1990, p. 179, § 5; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" twice in this Code section.

The 2007 amendment, effective July 1, 2007, substituted "any company providing telephone services" for "any telephone company" near the beginning of this Code section.

46-5-136. Authority of local government to create advisory board.

(a) The governing authority of a local government by resolution shall create an advisory board consisting of the sheriff, representatives from other public safety agencies which respond to emergency calls under the 9-1-1 system, and other individuals knowledgeable of emergency 9-1-1 systems and the emergency needs of the citizens of the local government, provided that such advisory board shall not exceed 13 members.

(b) The advisory board shall assist the local government in:

(1) Reviewing and analyzing the progress by public safety agencies in developing 9-1-1 system requirements;

(2) Recommending steps of action to effect the necessary coordination, regulation, and development of a 9-1-1 system;

(3) Identifying mutual aid agreements necessary to effect the 9-1-1 system;

(4) Assisting in the promulgation of necessary rules, regulations, operating procedures, schedules, and other such policy and administrative devices as shall be deemed necessary and appropriate; and

(5) Providing other services as may be deemed appropriate by the local government.

(c) The members of the advisory board shall not be compensated from moneys deposited into the Emergency Telephone System Fund. (Code 1981, § 46-5-136, enacted by Ga. L. 1990, p. 179, § 6; Ga. L. 1992, p. 1645, § 1; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" four times in subsections (a) and (b).

The 2007 amendment, effective July 1, 2007, inserted "9-1-1" following "emergency calls under the" in subsection (a).

46-5-137. Powers of Public Service Commission not affected.

This part shall not be construed as affecting the jurisdiction or powers of the Public Service Commission to establish rates, charges, or tariffs. (Code 1981, § 46-5-137, enacted by Ga. L. 1990, p. 179, § 7; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

Editor's notes. — Ga. L. 2005, p. 660, § 9, effective July 1, 2005, reenacted this Code section without change.

Ga. L. 2007, p. 318, § 2, effective July 1, 2007, reenacted this Code section without change.

46-5-138. Joint authorities.

(a)(1) By proper resolution of the local governing bodies, an authority may be created and activated by:

(A) Any two or more municipal corporations;

(B) Any two or more counties; or

(C) One or more municipal corporations and one or more counties.

(2) The resolutions creating and activating a joint authority shall specify the number of members of the authority, the number to be appointed by each participating county or municipal corporation, their terms of office, and their residency requirements.

(3) The resolutions creating and activating joint authorities may be amended by appropriate concurrent resolutions of the participating governing bodies.

(b) The public authority shall be authorized to contract with the counties or municipalities which formed the authority to operate an emergency 9-1-1 system for such local governments throughout the corporate boundaries of such local governments. Pursuant to such contracts, the local governments shall be authorized to provide funding to the authority from the Emergency Telephone System Fund maintained by each local government. No authority shall be formed until each local government forming the authority has imposed a monthly 9-1-1 charge or a monthly wireless enhanced 9-1-1 charge.

(c) Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including, but without limiting the generality of the foregoing, the power:

(1) To bring and defend actions;

(2) To adopt and amend a corporate seal;

(3) To make and execute contracts and other instruments necessary to exercise the powers of the authority;

(4) To receive and administer gifts, grants, and devises of any property;

(5) To operate emergency call answering services for law enforcement, emergency management, fire, and emergency medical service agencies 24 hours a day, seven days a week, 365 days a year;

(6) To acquire, by purchase, gift, or construction, any real or personal property desired to be acquired to operate the emergency 9-1-1 system;

(7) To sell, lease, exchange, transfer, assign, pledge, mortgage, dispose of, or grant options for any real or personal property or interest therein for any such purposes; and

(8) To mortgage, convey, pledge, or assign any properties, revenues, income, tolls, charges, or fees owned or received by the authority.

(d) The authority shall elect a chairperson and such other officers as deemed necessary by the authority. The authority shall select a director who shall be responsible for establishing operating standards and procedures and overseeing the operations of the emergency 9-1-1 system. The director may be an employee working in the operation of the emergency 9-1-1 system. The authority shall be responsible for hiring, training, supervising, and disciplining employees working in the operation of the emergency 9-1-1 system. An appropriate number of full-time and part-time employees shall be hired to operate the emergency 9-1-1 system. The authority shall determine the compensation of such employees and shall be authorized to provide other employee benefits. The authority shall submit its annual budget and a report of its financial records to the local governments which created the authority.

(e) The authority may contract with a service supplier in the same manner that local governments are so authorized under the provisions of this part.

(f) Notwithstanding subsection (i) of Code Section 46-5-134, if the joint authority and each local governing body activating the joint authority certify to the service provider in writing prior to the end of the 18 month period in advance of the date on which the 9-1-1 system was to have become fully operational that the system cannot be placed in operation on the date originally projected but that all parties are proceeding in a diligent and timely fashion to implement such service, the service provider shall continue to collect the monthly 9-1-1 charge for an additional period of 18 months or until the 9-1-1 system becomes fully operational, whichever occurs first.

(g) It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and constitute a public purpose, and the authority shall be performing an essential governmental function in the exercise of the power conferred upon it by this Code section. This state covenants that the authority shall be required to pay no taxes or assessments upon any of the property acquired or

leased by it or under its jurisdiction, control, possession, or supervision, or upon its activities in the operation or maintenance of the buildings erected or acquired by it, or upon any fees, rentals, or other charges for the use of such buildings, or upon other income received by the authority. The exemption provided in this Code section shall include an exemption from state and local sales and use tax on property purchased by the authority for use exclusively by the authority. (Code 1981, § 46-5-138, enacted by Ga. L. 1993, p. 1368, § 3; Ga. L. 1998, p. 1017, § 12; Ga. L. 2004, p. 366, § 2A; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" eleven times in subsections (b), (c), (d), and (f) and added subsection (g).

The 2007 amendment, effective July 1, 2007, deleted ", including the Wireless Phase I and Phase II Reserve Accounts," following "Fund" near the end of the second sentence in subsection (b); substituted "system" for "service" twice in subsection (f); and substituted "purpose, and the authority shall" for "purpose and that the authority will" near the end of the first sentence in subsection (g).

46-5-138.1. Guidelines pertaining to additional charges involving contracts between two or more counties.

(a) Notwithstanding any provision of paragraph (1) of subsection (a) of Code Section 46-5-134 to the contrary, where two or more counties, none of which offers emergency 9-1-1 system services on May 1, 1998, and any participating municipalities within such counties, if any, agree by intergovernmental contract to initiate or contract for the joint operation of an emergency 9-1-1 system for the first time after May 1, 1998, such local governments may impose a monthly 9-1-1 charge which exceeds $1.50 per telephone service but only so long as the following procedure shall be followed:

(1) The participating local governments shall, with input from a telephone service supplier, prepare an estimated budget for the implementation of the joint emergency 9-1-1 system with costs limited to items eligible for funding through the Emergency Telephone System Fund;

(2) An estimate of the revenue to be generated by the 9-1-1 charge authorized by paragraph (1) of subsection (a) of Code Section 46-5-134 during the first 18 months of collection shall be prepared;

(3) If the total amount necessary for implementation of the emergency 9-1-1 system in paragraph (1) of this subsection exceeds the estimated revenue from imposition of the 9-1-1 charge specified in paragraph (2) of this subsection, the monthly 9-1-1 charge per telephone service may be increased on a pro rata basis during the first 18 months of collection to the extent necessary to provide revenue sufficient to pay the amount specified in paragraph (1) of this

subsection, but in no case shall such monthly charge be greater than $2.50 per telephone service. Notwithstanding subsection (i) of Code Section 46-5-134, if each local governing body which is a party to an intergovernmental contract certifies to the service provider in writing prior to the end of the 18 month period in advance of the date on which the 9-1-1 system was to have become fully operational that the system cannot be placed in operation on the date originally projected but that all parties are proceeding in a diligent and timely fashion to implement such service, the service provider shall continue to collect the monthly 9-1-1 charge for an additional period of 18 months or until the 9-1-1 system becomes fully operational, whichever occurs first; and

(4) Such local governments shall comply with the requirements of Code Section 46-5-133 which relate to the imposition of a monthly 9-1-1 charge.

Nothing in this subsection shall be construed to authorize the imposition of any charge upon a wireless service. Except as otherwise provided in this subsection, the requirements of Code Section 46-5-134 which relate to monthly 9-1-1 charges on telephone services shall apply to charges imposed pursuant to this subsection.

(b) The increased monthly 9-1-1 charge authorized by subsection (a) of this Code section shall also be available to any joint 9-1-1 authority created pursuant to Code Section 46-5-138 after May 1, 1998. (Code 1981, § 46-5-138.1, enacted by Ga. L. 1998, p. 1017, § 13; Ga. L. 2004, p. 366, § 2B; Ga. L. 2005, p. 660, § 9/HB 470; Ga. L. 2007, p. 318, § 2/HB 394.)

The 2005 amendment, effective July 1, 2005, substituted "9-1-1" for "'911'" throughout this Code section.

The 2007 amendment, effective July 1, 2007, in subsection (a), substituted "telephone service" for "exchange access facility" throughout the subsection, in the introductory paragraph, inserted "system" preceding "services" and substituted "shall be" for "is", substituted "telephone" for "local exchange" in paragraph (a)(1); substituted "system" for "service" twice in paragraph (a)(3), inserted "shall" in paragraph (a)(4), and, in the ending undesignated paragraph, substituted "service" for "telecommunications connection", and substituted "telephone services" for "exchange access facilities".

46-5-138.2. "Director" defined; training and instruction.

(a) As used in this Code section, the term "director" means any person having direct operational control of a public safety answering point, any person who has as part of his or her duties supervisory responsibility for one or more communication officers or other employees who answer 9-1-1 calls received by a public safety answering point, or any person who has system management responsibility for the public safety answering point.

(b) In addition to any training required under federal or state law, any persons serving as a director may enroll in, attend, and complete satisfactorily a course of training and instruction on the management of public safety answering points and the establishment and operation of 9-1-1 systems. Such course of instruction for directors shall be developed and made available by the center subject to the availability and receipt of funding. (Code 1981, § 46-5-138.2, enacted by Ga. L. 2007, p. 318, § 2/HB 394; Ga. L. 2008, p. 324, § 46/SB 455.)

Effective date. — This Code section became effective July 1, 2007.

The 2008 amendment, effective May 12, 2008, part of an Act to revise, modernize, and correct the Code, revised capitalization in subsection (a).

46-5-139. Joint Study Committee on Wireless Enhanced 9-1-1 Charges.

Reserved. Repealed by Ga. L. 2005, p. 660, § 9/HB 470, effective July 1, 2005.

Editor's notes. — This Code section was based on Code 1981, § 46-5-139, enacted by Ga. L. 1998, p. 1017, § 14.

ARTICLE 3

TELEGRAPH SERVICE

46-5-140 through 46-5-149.

Reserved. Repealed by Ga. L. 2012, p. 847, § 11/HB 1115, effective July 1, 2012.

Editor's notes. — This article consisted of Code Sections 46-5-140 through 46-5-149, relating to telegraph service, and was based on Ga. L. 1880-81, p. 115, §§ 1, 2; Code 1882, § 3412; Ga. L. 1893, p. 86, §§ 1-5; Civil Code 1895, §§ 2339-2343, 2348; Ga. L. 1908, p. 94, §§ 1, 2; Civil Code 1910, §§ 2803-2807, 2812-2814; Code 1933, §§ 104-101—104-104, 104-201, 104-206—104-208; Code 1981, §§ 46-5-140—46-5-149; Ga. L. 1983, p. 859, § 1; Ga. L. 1984, p. 22, § 46, Ga. L. 1992, p. 6, § 46; Ga. L. 2005, p. 524, § 1/HB 622.

ARTICLE 4

TELECOMMUNICATIONS AND COMPETITION DEVELOPMENT

46-5-161. Legislative findings; intent.

JUDICIAL DECISIONS

Universal support payments as taxable income. — Because defendant local telephone company taxpayer's "universal service support" payment calculations for

purposes of O.C.G.A. §§ 46-5-161, 46-5-162(10)(B), and 46-5-166(f)(2) were considered revenue and a revenue requirement of 11.25 percent, which factored into expenses, taxes, and return, the payments were not contribution to capital excluded from income under I.R.C. § 118, and plaintiff United States was entitled to summary judgment. United States v. Coastal Utils., Inc., 483 F. Supp. 2d 1232 (S.D. Ga. 2007), aff'd, 514 F.3d 1184 (11th Cir. 2008).

46-5-162. Definitions.

JUDICIAL DECISIONS

Universal support payments as taxable income. — Because defendant local telephone company taxpayer's "universal service support" payment calculations for purposes of O.C.G.A. §§ 46-5-161, 46-5-162(10)(B), and 46-5-166(f)(2) were considered revenue and a revenue requirement of 11.25 percent, which factored into expenses, taxes, and return, the payments were not contribution to capital excluded from income under I.R.C. § 118, and plaintiff United States was entitled to summary judgment. United States v. Coastal Utils., Inc., 483 F. Supp. 2d 1232 (S.D. Ga. 2007), aff'd, 514 F.3d 1184 (11th Cir. 2008).

46-5-166. Rates for switched access.

(a) An electing company, as defined in paragraph (5) of Code Section 46-5-162, shall set rates on a basis that does not unreasonably discriminate between similarly situated customers; provided, however, that all such rates are subject to a complaint process for abuse of market position in accordance with rules to be promulgated by the commission.

(b) Except as otherwise provided in this subsection, the rates for switched access by each Tier 1 local exchange company shall be no higher than the rates charged for interstate access by the same local exchange company. The rates for switched access shall be negotiated in good faith between the parties. In the event that the rates for switched access cannot be negotiated between the parties, any party may petition the commission to set reasonable rates, terms, or conditions for switched access. The commission shall render a final decision in any proceeding initiated pursuant to the provisions of this subsection no later than 60 days after the close of the record except that the commission, by order, may extend such period in any case in which it shall find that the complexity of the issues and the length of the record require an extension of such period, in which event the commission shall render a decision at the earliest date practicable. In no event shall the commission delay the rendering of a final decision in such proceeding beyond the earlier of 120 days after the close of the record or 180 days from the filing of the notice of petition for determination of rates for switched access that initiated the proceeding.

(c) Beginning January 1, 2011, and ending December 31, 2015, each Tier 2 local exchange company shall adjust in equal annual increments its intrastate switched access charges to parity with its similar inter-

state switched access rates. The commission shall have authority to govern the transition of Tier 2 local exchange company switched access rates to their corresponding interstate levels and the commission shall allow adjustment of basic local exchange services or universal access funds, as necessary to recover those revenues, based on calendar year 2008, lost through the concurrent reduction of the intrastate switched access rates. In the event that the rates for switched access cannot be negotiated in good faith between the parties, the commission shall determine the reasonable rates for switched access in accordance with the procedures provided in subsection (b) of this Code section. Any Tier 2 local exchange company that is an electing company may elect to become subject to rate of return regulation by certification to the commission of this election no later than December 31, 2010. A Tier 2 local exchange company making this election is prohibited from making a subsequent election to have the rates, terms, and conditions for its services determined pursuant to the alternative regulation described in subsection (b) of Code Section 46-5-165 prior to January 1, 2016.

(d) Beginning January 1, 2011, and ending December 31, 2020, each telecommunications company holding a certificate of authority or otherwise authorized to provide telecommunications services in this state other than a Tier 2 local exchange company shall adjust in equal annual increments its intrastate switched access charges to parity with its similar interstate switched access rates.

(e) In accordance with rules to be promulgated by the commission, any telecommunications company providing intrastate switched access services shall file tariffs with the commission for intrastate switched access services and other applicable services that state the terms and conditions of such services and the rates as established pursuant to this Code section.

(f) The commission shall review the intrastate switched access rates as set forth in subsections (c) and (d) of this Code section and shall report the results of its findings and any actions taken to the General Assembly by or before December 31, 2011. Thereafter, the commission shall include in its annual report to the General Assembly required under Code Section 46-5-174 the status of any intrastate switched access rate changes under this Code section. (Code 1981, § 46-5-166, enacted by Ga. L. 1995, p. 886, § 2; Ga. L. 2010, p. 1135, § 3/HB 168.)

The 2010 amendment, effective June 4, 2010, rewrote this Code section.

Editor's notes. — Ga. L. 2010, p. 1135, § 1, not codified by the General Assembly, provides that: "It is the intent of the General Assembly to:

"(1) Update and modernize Georgia's telecommunications laws to encourage competition and bring about lower prices and better services for the consumer;

"(2) Make Georgia a more attractive place for telecommunications investment and encourage the deployment of advanced technologies;

"(3) Create and preserve jobs for Georgia workers; and

"(4) Reduce the subsidies paid by Georgia consumers.

"It is not the intent of the General Assembly to impose any fee or other charge on Georgia consumers."

Ga. L. 2010, p. 1135, § 2, not codified by the General Assembly, provides that: "This Act shall be known as and may be cited as the 'Telecom Jobs and Investment Act.'"

JUDICIAL DECISIONS

Universal support payments as taxable income. — Because defendant local telephone company taxpayer's "universal service support" payment calculations for purposes of O.C.G.A. §§ 46-5-161, 46-5-162(10)(B), and 46-5-166(f)(2) were considered revenue and a revenue requirement of 11.25 percent, which factored into expenses, taxes, and return, the payments were not contribution to capital excluded from income under I.R.C. § 118, and plaintiff United States was entitled to summary judgment. United States v. Coastal Utils., Inc., 483 F. Supp. 2d 1232 (S.D. Ga. 2007), aff'd, 514 F.3d 1184 (11th Cir. 2008).

46-5-167. Universal Access Fund.

(a) The commission shall administer a Universal Access Fund to assure the provision of reasonably priced access to basic local exchange services throughout Georgia. The fund shall be administered by the commission pursuant to this Code section and under rules to be promulgated by the commission as needed to assure that the fund operates in a competitively neutral manner between competing telecommunications providers.

(b) All telecommunications companies holding a certificate of authority issued by the commission to provide services within Georgia shall contribute quarterly to the fund as provided in this subsection. The commission shall determine the manner of contribution using either one or a combination of the following two contribution methodologies:

(1) A charge for each working telephone number; or

(2) A proportionate amount based on each company's gross intrastate revenues from the provision of telecommunications services to end users.

In calculating such contributions, the commission shall allow a local exchange company holding a certificate of authority issued by the commission after July 1, 1995, and before January 1, 2010, with primary headquarters in Georgia and more than 750 full-time employees working in Georgia as of January 1, 2010, to utilize accumulated unexpired Georgia net operating losses for taxable years ending prior to January 1, 2010, on a full dollar-for-dollar basis to reduce up to 50 percent of its contribution to the Universal Access Fund. Within the same tax year of the election, companies making such election shall formally notify the Department of Revenue that the company agrees to forego any rights or claims to the Georgia net operating losses so used.

The commission may allow any telecommunications company certified as a competitive local exchange carrier to request a hearing seeking relief from this contribution requirement upon application, demonstration, and good cause shown that such competitive local exchange carrier does not receive a benefit from the reduction in intrastate switched access charges pursuant to subsection (c) of Code Section 46-5-166.

(c) Contributions to the fund shall be determined if, after notice and opportunity for hearing, the commission calculates the difference in the reasonable actual costs of basic local exchange services throughout Georgia and the maximum amounts that may be charged for such services and shall also account for reductions in intrastate switched access charges pursuant to subsection (c) of Code Section 46-5-166.

(d)(1) Nothing in this subsection shall require any Tier 2 local exchange company to raise any of its rates. Nothing in this subsection shall authorize any Tier 2 local exchange company to receive any subsidy from the Universal Access Fund. For purposes of this subsection, the term "subsidy" means any payment authorized by paragraph (2) of this subsection in excess of the intrastate access charge reductions pursuant to subsection (c) of Code Section 46-5-166.

(2) After notice and opportunity for hearing, the commission shall determine the amount of moneys in the fund that shall be distributed quarterly. Such determination shall be made as follows:

(A) Distributions to carriers that have reduced intrastate switched access charges pursuant to subsection (c) of Code Section 46-5-166 shall be limited to an amount reflective of such access charge reductions and shall also be reduced by the amount per access line, which if added to the carrier's basic local exchange service rate, in accordance with a schedule established by the commission, results in an amount that would be equal to 110 percent of the July 1, 2009, residential state-wide weighted average rate for basic local exchange services imputed across all access lines and adjusted annually for inflation measured by the change in GDP-PI. Any distributions pursuant to this subparagraph shall be limited to a period of no more than ten years; and

(B) Except for those distributions to Tier 2 local exchange companies that have reduced intrastate switched access charges pursuant to subsection (c) of Code Section 46-5-166, distributions to a Tier 2 local exchange carrier subject to rate of return regulation shall also be reduced by the amount per access line, which if added to the carrier's basic local exchange service rate, in accordance with a schedule established by the commission, results in an amount that would be equal to 110 percent of the July 1, 2009, residential

state-wide weighted average rate for basic local exchange services imputed across all access lines and adjusted annually for inflation measured by the change in GDP-PI. The commission shall determine any such distributions upon application, demonstration, and good cause shown that the reasonable actual costs to provide basic local exchange services exceed the maximum fixed price permitted for such basic local exchange services; any distributions pursuant to this subparagraph shall be limited to a period of no more than 20 years.

(e) The commission shall require any local exchange company seeking reimbursement from the fund pursuant to subparagraph (d)(2)(B) of this Code section to file the information reasonably necessary to determine the actual and reasonable costs of providing basic local exchange services.

(f) The commission shall have the authority to make adjustments to the contribution or distribution levels based on yearly reconciliations and to order further contributions or distributions as needed between companies to equalize reasonably the burdens of providing basic local exchange service throughout Georgia.

(g) A local exchange company or other company shall not establish a surcharge on customers' bills to collect contributions required under this Code section without first submitting to the Public Service Commission the methodology and data used by such company for approval by the commission and upon a showing to the commission that the surcharge does not result in an increase in the company's service rates; provided, however, that such company shall not be required to submit for approval separate line items or surcharges that are specifically authorized or required by federal law or other provisions of state law. (Code 1981, § 46-5-167, enacted by Ga. L. 1995, p. 886, § 2; Ga. L. 2010, p. 1135, § 4/HB 168; Ga. L. 2012, p. 674, § 1/HB 332.)

The 2010 amendment, effective June 4, 2010, rewrote this Code section.

The 2012 amendment, effective January 1, 2013, in subsection (g), deleted "from customers'" following "bills to collect" and added the language beginning "without first submitting" and ending with "provisions of state law" at the end.

Editor's notes. — Ga. L. 2010, p. 1135, § 1, not codified by the General Assembly, provides that: "It is the intent of the General Assembly to:

"(1) Update and modernize Georgia's telecommunications laws to encourage competition and bring about lower prices and better services for the consumer;

"(2) Make Georgia a more attractive place for telecommunications investment and encourage the deployment of advanced technologies;

"(3) Create and preserve jobs for Georgia workers; and

"(4) Reduce the subsidies paid by Georgia consumers.

"It is not the intent of the General Assembly to impose any fee or other charge on Georgia consumers."

Ga. L. 2010, p. 1135, § 2, not codified by the General Assembly, provides that: "This Act shall be known as and may be cited as the 'Telecom Jobs and Investment Act.'"

46-5-171.1. Written authorization required by customer prior to being charged for service initiated by a third party.

(a) Except as provided in subsection (b) of this Code section, no telecommunications company shall charge a customer for any service which is provided to the customer by a nonaffiliated third party until such third party has certified to the telecommunications company that the third party has received the customer's written authorization for such charges. When a customer initiates a new type of such third-party service or changes the type or types of such third-party service received, the invoice for such new or changed services must state the charges for such services in a clear, conspicuous, separate, and distinct manner so as to ensure that the customer is aware of the new or changed charges. Any telecommunications company that charges a customer for a service which is provided to the customer by a nonaffiliated third party must provide to such customer the ability to block the nonaffiliated third-party service and any charges associated with such service.

(b) This Code section shall not apply to any transaction between a customer and that customer's selected provider of basic local exchange, inter-LATA, or intra-LATA telecommunications services or initial requests to subscribe to such services; wireless services; requests for a change in a customer's provider of local exchange service or a change in a customer's primary interexchange inter-LATA or intra-LATA carrier; or customer initiated use of abbreviated dialing codes or other pay-per-use services. (Code 1981, § 46-5-171.1, enacted by Ga. L. 1998, p. 1378, § 1; Ga. L. 1999, p. 877, § 1; Ga. L. 2009, p. 318, § 1/HB 302.)

The 2009 amendment, effective January 1, 2010, added the last sentence in subsection (a).

ARTICLE 6

DISCLOSURE OF CERTAIN CUSTOMER INFORMATION

Effective date. — This article became effective April 28, 2006.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Article 6 as enacted by Ga. L. 2006, p. 641, was redesignated as Article 7, and Article 6 as enacted by Ga. L. 2006, p. 682, was redesignated as Article 8.

Editor's notes. — Ga. L. 2006, p. 562, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Telephone Records Privacy Protection Act.'"

Ga. L. 2006, p. 562, § 2/SB 455, not codified by the General Assembly, provides that: "The General Assembly finds that:

"(1) Telephone records can be of great use to criminals because the information contained in call logs listed in such records include a wealth of personal data;

"(2) Many call logs reveal the names of telephone users' doctors, public and private relationships, business associates, and more;

"(3) Although other personal information such as social security numbers may appear on public documents, which can be

accessed by data brokers, the only warehouse of telephone records is located at the telephone companies themselves;

"(4) Telephone records are sometimes accessed without authorization of the customer by:

"(A) An employee of the telephone service provider selling the data; and

"(B) 'Pretexting,' whereby a data broker or other person pretends to be the owner of the telephone and convinces the telephone company's employees to release the data to such person; and

"(5) Telephone companies encourage customers to manage their accounts online with many setting up the online capability in advance, although many customers never access their account online. If someone seeking the information activates the account before the customer, he or she can gain unfettered access to the telephone records and call logs of that customer."

46-5-210. Definitions.

(a) As used in this article, the term:

(1) "Breach of telephone records" means the unauthorized acquisition of telephone records that compromises the security, confidentiality, or integrity of that information as maintained by the telecommunications company.

(2) "End user" means any person, corporation, partnership, firm, municipality, cooperative, organization, governmental agency, building owner, or other entity provided with a telecommunications service for its own consumption and not for resale.

(3) "Notice" means:

(A) Written notice;

(B) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code; or

(C) Substitute notice, if the telecommunications company demonstrates that the cost of providing notice would exceed $250,000.00, that the affected class to be notified exceeds 500,000 individuals, or that the telecommunications company does not have sufficient contact information to provide written or electronic notice to such individuals. Substitute notice shall consist of all of the following:

(i) E-mail notice, if the telecommunications company has e-mail addresses for the individuals to be notified;

(ii) Conspicuous posting of the notice on the telecommunications company's website, if the telecommunications company maintains one; and

(iii) Notification to major state-wide media.

(4) "Telephone record" means information retained by a telecommunications company that relates to the telephone number dialed by the customer, the number of telephone calls directed to a customer, or other data related to the telephone calls typically contained on a customer telephone bill, such as the time the calls started and ended, the duration of the calls, the time of day the calls were made, and any charges applied. For purposes of this article, any information collected and retained by, or on behalf of, customers utilizing caller identification or other similar technology does not constitute a telephone record. (Code 1981, § 46-5-210, enacted by Ga. L. 2006, p. 562, § 5/SB 455.)

46-5-211. Consent of end user required for release of telephone records; law enforcement exception.

No telecommunications company may release the telephone records of any end user with a Georgia billing address without the express consent of the end user except with proper law enforcement or court order documentation, as otherwise allowed by law, or by an interconnection agreement that has been approved by the Public Service Commission. (Code 1981, § 46-5-211, enacted by Ga. L. 2006, p. 562, § 5/SB 455.)

46-5-212. Security certification required.

Each telecommunications company shall provide annually to the office of the Attorney General certification that it has established operating procedures for security of telephone records that are adequate to ensure compliance with 47 U.S.C. Section 222 and any rules promulgated thereunder. (Code 1981, § 46-5-212, enacted by Ga. L. 2006, p. 562, § 5/SB 455.)

46-5-213. Circumstances to which this article not applicable.

No provision of this article shall be construed to prohibit a telecommunications company, vendor, or supplier from obtaining, using, releasing, or permitting access to any telephone record of any end user with a Georgia billing address:

(1) As otherwise authorized or permitted by law or by an interconnection agreement that has been approved by the Public Service Commission;

(2) With the lawful consent of the end user or the end user's designated representative;

(3) As necessary for the provision of services and management of the network, for the protection of the rights or property of the

provider, for the protection of end users, and for the protection of other telecommunications companies from fraudulent, abusive, or unlawful use of or subscription to services;

(4) To a governmental entity, if the telecommunications company reasonably believes that an emergency involving the immediate danger of death or serious physical injury to any person justifies disclosure of the information;

(5) To the National Center for Missing and Exploited Children, in connection with the report submitted thereto under Section 227 of the federal Victims of Child Abuse Act of 1990;

(6) To the telecommunications company's affiliates, agents, suppliers, vendors, or subcontractors to provide service or billing functions; or

(7) To a court or party to a legal proceeding pursuant to a court order, subpoena, notice to produce, or discovery in that proceeding. (Code 1981, § 46-5-213, enacted by Ga. L. 2006, p. 562, § 5/SB 455.)

46-5-214. Action in event of telephone record security breach; notification to Georgia residents; law enforcement exception; violations shall be unfair or deceptive practice in consumer transactions.

(a) In the event of a breach of a telephone record concerning a Georgia resident, the telecommunications company must provide notice to the Georgia resident immediately following discovery or notification of the breach if such breach is reasonably likely to cause quantifiable harm to the Georgia resident. The notice must be made in the most expedient manner possible and without unreasonable delay, consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the telephone record.

(b) Notwithstanding any provisions of this article to contrary, a telecommunications company that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this Code section shall be deemed to be in compliance with the notification requirements of this Code section if it notifies the individuals who are the subject of the notice in accordance with its policies in the event of a breach of the security of the system.

(c) The notice required by this Code section shall be delayed if a law enforcement agency informs the business that notification may impede a criminal investigation or jeopardize national or homeland security, provided that such request is made in writing or the business docu-

ments such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. The notice required by this Code section shall be provided without unreasonable delay after the law enforcement agency communicates to the business its determination that notice will no longer impede the investigation or jeopardize national or homeland security.

(d) A violation of this Code section constitutes an unfair or deceptive practice in consumer transactions within the meaning of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975." (Code 1981, § 46-5-214, enacted by Ga. L. 2006, p. 562, § 5/SB 455.)

ARTICLE 7

COMPETITIVE EMERGING COMMUNICATIONS TECHNOLOGIES

Effective date. — This article became effective April 28, 2006.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Article 6, as enacted by Ga. L. 2006, p. 641, § 2/SB 120, was redesignated as Article 7, and Article 6 as enacted by Ga. L. 2006, p. 682, was redesignated as Article 8.

Editor's notes. — Ga. L. 2006, p. 641, § 1, not codified by the General Assembly, provides that: "The General Assembly finds:

"(1) That it is in the public interest to encourage deployment of the emerging communications technologies of broadband service, voice over Internet protocol, and wireless service by expressly removing any power the Georgia Public Service Commission may have to set the rates and the terms and conditions for the offering of such services within Georgia;

"(2) That market based competition is the best mechanism for the selection and setting of such rates, terms, and conditions for such emerging communications technologies and to encourage the adoption and use of such services by Georgia consumers; and

"(3) That Georgia's consumers need timely and accurate information as to the actual cost and levels of delivered service in order to make informed market based choices among competing offerings of such emerging communications technologies."

46-5-220. Short title.

This article shall be known and may be cited as the "Competitive Emerging Communications Technologies Act of 2006." (Code 1981, § 46-5-220, enacted by Ga. L. 2006, p. 641, § 2/SB 120.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 46-5-200, as enacted by Ga. L. 2006, p. 641, § 2/SB 120, was redesignated as Code Section 46-5-220.

46-5-221. Definitions.

As used in this article, the term:

(1) "Broadband service" means a service that consists of the capability to transmit at a rate not less than 200 kilobits per second in either the upstream or downstream direction and in combination with such service provide either:

(A) Access to the Internet; or

(B) Computer processing, information storage, or protocol conversion.

For the purposes of this article, broadband service does not include any information content or service applications provided over such access service nor any intrastate service that was subject to a tariff in effect as of September 1, 2005.

(2) "VoIP" means Voice over Internet Protocol services offering real-time multidirectional voice functionality utilizing any Internet protocol.

(3) "Wireless service" means commercial mobile radio service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves. (Code 1981, § 46-5-221, enacted by Ga. L. 2006, p. 641, § 2/SB 120; Ga. L. 2007, p. 318, § 3/HB 394; Ga. L. 2013, p. 141, § 46/HB 79.)

The 2007 amendment, effective July 1, 2007, substituted "Voice over Internet Protocol" for "voice over Internet protocol" at the beginning of paragraph (2).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in the middle of paragraph (2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 46-5-201, as enacted by Ga. L. 2006, p. 641, § 2/SB 120, was redesignated as Code Section 46-5-221.

46-5-222. Commission has no authority over setting of rates or terms and conditions for the offering of broadband service, voice over Internet protocol, or wireless service; limitations.

(a) The Public Service Commission shall not have any jurisdiction, right, power, authority, or duty to impose any requirement or regulation relating to the setting of rates or terms and conditions for the offering of broadband service, VoIP, or wireless services.

(b) This Code section shall not be construed to affect:

(1) State laws of general applicability to all businesses, including, without limitation, consumer protection laws and laws relating to restraint of trade;

(2) Any authority of the Public Service Commission with regard to consumer complaints; or

(3) Any authority of the Public Service Commission to act in accordance with federal laws or regulations of the Federal Communications Commission, including, without limitation, jurisdiction granted to set rates, terms, and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements.

(c) Except as otherwise expressly provided in this Code section, nothing in this Code section shall be construed to restrict or expand any other authority or jurisdiction of the Public Service Commission. (Code 1981, § 46-5-222, enacted by Ga. L. 2006, p. 641, § 2/SB 120; Ga. L. 2010, p. 1135, § 5/HB 168.)

The 2010 amendment, effective June 4, 2010, substituted "services" for "service" at the end of subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 46-5-202, as enacted by Ga. L. 2006, p. 641, § 2/SB 120, was redesignated as Code Section 46-5-222.

Editor's notes. — Ga. L. 2010, p. 1135, § 1, not codified by the General Assembly, provides that: "It is the intent of the General Assembly to:

"(1) Update and modernize Georgia's telecommunications laws to encourage competition and bring about lower prices and better services for the consumer;

"(2) Make Georgia a more attractive place for telecommunications investment and encourage the deployment of advanced technologies;

"(3) Create and preserve jobs for Georgia workers; and

"(4) Reduce the subsidies paid by Georgia consumers.

"It is not the intent of the General Assembly to impose any fee or other charge on Georgia consumers."

Ga. L. 2010, p. 1135, § 2, not codified by the General Assembly, provides that: "This Act shall be known as and may be cited as the 'Telecom Jobs and Investment Act.'"

ARTICLE 8

TELEPHONE RECORDS PROTECTION

Effective date. — This article became effective May 1, 2006.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Article 6, as enacted by Ga. L. 2006, p. 682, § 1/HB 1290, was redesignated as Article 8.

46-5-230. Short title.

This article shall be known and may be cited as the "Georgia Telephone Records Protection Act." (Code 1981, § 46-5-230, enacted by Ga. L. 2006, p. 682, § 1/HB 1290.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 46-5-200, as enacted by Ga. L. 2006, p. 682, § 1/HB 1290, was redesignated as Code Section 46-5-230.

46-5-231. Definitions.

As used in this article, the term:

(1) "Procure" means to obtain by any means, whether electronically or in writing or in oral form, with or without consideration.

(2) "Telephone" means any device used by a person for voice communications in connection with the services of a voice service provider, whether such voice communications are transmitted in analog, data, or any other form.

(3) "Telephone record" means information retained by a voice service provider that relates to a telephone number dialed by the customer or the incoming telephone numbers of calls directed to a customer or other data related to telephone calls typically contained on a customer telephone bill, such as the time the call started and ended, the duration of the call, the time of day the call was made, and any charges applied. For purposes of this article, any information collected and retained by, or on behalf of, customers utilizing caller identification or other similar technology does not constitute a telephone record.

(4) "Voice service provider" means any person, firm, partnership, corporation, association, or municipal, county, or local governmental entity that provides telephone services to a customer, irrespective of the communications technology used to provide such service, including, but not limited to, traditional wireline or cable telephone service; cellular, broadband personal communications service, or other wireless telephone service; microwave, satellite, or other terrestrial telephone service; and Voice over Internet Protocol service. (Code 1981, § 46-5-231, enacted by Ga. L. 2006, p. 682, § 1/HB 1290; Ga. L. 2007, p. 318, § 4/HB 394.)

The 2007 amendment, effective July 1, 2007, substituted "Voice over Internet Protocol" for "voice over Internet protocol" near the end of paragraph (4).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 46-5-201, as enacted by Ga. L. 2006, p. 682, § 1/HB 1290, was redesignated as Code Section 46-5-230.

46-5-232. Penalties.

It shall be a felony, punishable by a fine of not more than $250,000.00, imprisonment for not more than ten years, or both, for a person to do any of the following acts:

(1) To knowingly procure, attempt to procure, solicit, or conspire with another to procure a telephone record of any resident or business of this state without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means;

(2) To knowingly sell, or attempt to sell, a telephone record of any resident or business of this state without the authorization of the customer to whom the record pertains; or

(3) To receive a telephone record of any resident or business of this state knowing that the record has been obtained without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means. (Code 1981, § 46-5-232, enacted by Ga. L. 2006, p. 682, § 1/HB 1290.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 46-5-202, as enacted by Ga. L. 2006, p. 682, § 1/HB 1290, was redesignated as Code Section 46-5-232.

Pursuant to Code Section 28-9-5, in 2006, the subsection (a) designation was deleted.

46-5-233. Article not to be construed so as to prevent certain law enforcement actions.

No provision of this article shall be construed so as to prevent any action by a law enforcement agency or any officer or agent of the agency, under color of law, to obtain telephone records in connection with the performance of the official duties of the agency. (Code 1981, § 46-5-233, enacted by Ga. L. 2006, p. 682, § 1/HB 1290.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 46-5-203, as enacted by Ga. L. 2006, p. 682, § 1/HB 1290, was redesignated as Code Section 46-5-233.

46-5-234. Other circumstances to which this article not applicable.

(a) No provision of this article shall be construed to prohibit a voice service provider from obtaining, using, disclosing, or permitting access to any telephone record, either directly or indirectly through its agents, vendors, or suppliers, in any of the following circumstances:

(1) As otherwise authorized or permitted by law, including, but not limited to, the sharing of the records with its affiliates or pursuant to the terms of an interconnection agreement or other contractual agreement between voice service providers;

(2) With the consent or approval of the customer or subscriber;

(3) As may be reasonably incident to the rendition of the service or to the protection of the rights or property of the provider of that service or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of or subscription to the services;

(4) To give access to a governmental entity, if the voice service provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information;

(5) To give access to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under Section 227 of the federal Victims of Child Abuse Act of 1990, 42 U.S.C. Section 13032; or

(6) Pursuant to a court order or pursuant to a subpoena, discovery request, or notice to produce properly served by any party in a civil action, administrative proceeding, or criminal proceeding.

(b) The provisions of this article shall not apply to a voice service provider, its employees, agents, or representatives who reasonably and in good faith act pursuant to the provisions of subsection (a) of this Code section, notwithstanding any later determination that the act was not authorized. (Code 1981, § 46-5-234, enacted by Ga. L. 2006, p. 682, § 1/HB 1290.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 46-5-204, as enacted by Ga. L. 2006, p. 682, § 1/HB 1290, was redesignated as Code Section 46-5-234.

46-5-235. No private right of action created.

No private right of action is authorized pursuant to this article. (Code 1981, § 46-5-235, enacted by Ga. L. 2006, p. 682, § 1/HB 1290.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 46-5-205, as enacted by Ga. L. 2006, p. 682, § 1/HB 1290, was redesignated as Code Section 46-5-235.

ARTICLE 9

RETAIL TELECOMMUNICATIONS SERVICES

Effective date. — This article became effective June 4, 2010.

Editor's notes. — Ga. L. 2010, p. 1135, § 1, not codified by the General Assembly, provides that: "It is the intent of the General Assembly to:

"(1) Update and modernize Georgia's telecommunications laws to encourage competition and bring about lower prices and better services for the consumer;

"(2) Make Georgia a more attractive place for telecommunications investment and encourage the deployment of advanced technologies;

"(3) Create and preserve jobs for Georgia workers; and

"(4) Reduce the subsidies paid by Georgia consumers.

"It is not the intent of the General Assembly to impose any fee or other charge on Georgia consumers."

Ga. L. 2010, p. 1135, § 2, not codified by the General Assembly, provides that: "This Act shall be known as and may be cited as the 'Telecom Jobs and Investment Act.'"

46-5-250. Retail telecommunications service defined.

As used in this article, the term "retail telecommunications service" means the offering of two-way interactive communications for a fee directly to end users. Such term does not include wireless service as defined in paragraph (3) of Code Section 46-5-221 nor does it include the obligations of an incumbent local exchange carrier, as defined by 47 U.S.C. Section 251, pursuant to 47 U.S.C. Sections 251, 252, and 271 and the Federal Communications Commission's rules and regulations implementing such sections. (Code 1981, § 46-5-250, enacted by Ga. L. 2010, p. 1135, § 6/HB 168.)

46-5-251. Authority of Public Service Commission limited.

(a) Notwithstanding any other provision of law in this chapter or Chapter 2 of this title except the provisions of Code Section 46-5-252 and the complaint process set forth in subsection (a) of the Code Section 46-5-166, the Public Service Commission shall not have any jurisdiction, right, power, authority, or duty to impose or enforce any requirement, regulation, or rule relating to the setting of rates or terms and conditions for the offering of retail telecommunications service by a telecommunications company not subject to rate of return regulation.

(b) This Code section shall not be construed to affect:

(1) State laws of general applicability to all businesses, including, without limitation, consumer protection laws, and laws relating to restraint of trade;

(2) Any authority of the Public Service Commission with regard to consumer complaints; or

(3) Any authority of the Public Service Commission to act in accordance with federal laws or regulations of the Federal Communications Commission, including, without limitation, jurisdiction granted to set rates, terms, and conditions for access to unbundled network elements, intercarrier compensation, and to arbitrate and enforce interconnection agreements.

(c) Except as otherwise expressly provided in this Code section, nothing in this Code section shall be construed to restrict or expand any other authority or jurisdiction of the Public Service Commission. (Code 1981, § 46-5-251, enacted by Ga. L. 2010, p. 1135, § 6/HB 168.)

46-5-252. Prohibition against passing cost of compliance on to consumers.

No company providing retail telecommunications service shall impose a separate line item or surcharge on customers' bills to recover any

costs of complying with any state law or regulations without first submitting to the Public Service Commission the methodology and data used by such company for approval by the commission; provided, however, that such a company shall not be required to submit for approval separate line items or surcharges that are specifically authorized or required by federal or state law. No fines or penalties imposed by the Public Service Commission shall be considered as a cost of complying with a state law or regulation or included in any such separate line item or surcharge, or as a portion thereof. (Code 1981, § 46-5-252, enacted by Ga. L. 2010, p. 1135, § 6/HB 168.)

CHAPTER 6

RADIO COMMON CARRIERS

Sec.
46-6-1 through 46-6-16 [Repealed].

46-6-1 through 46-6-16.

Reserved. Repealed by Ga. L. 2001, p. 1037, § 1, effective July 1, 2001.

Editor's notes. — Ga. L. 2013, p. 141, § 46/HB 79, reserved the designation of this chapter, effective April 24, 2013.

CHAPTER 7

MOTOR CARRIERS

Sec.
46-7-1 through 46-7-101 [Repealed].

46-7-1 through 46-7-101.

Reserved. Repealed by Ga. L. 2012, p. 580, § 16/HB 865, effective July 1, 2012.

Editor's notes. — Former Code Sections 46-7-100 and 46-7-101 (Article 5) (Ga. L. 1983, p. 735, § 2; Ga. L. 1990, p. 2022, § 3), relating to motor vehicle safety inspections, were repealed by Ga. L. 2000, p. 951, § 9-4, effective July 1, 2001.

This chapter consisted of Code Sections 46-7-1 through 46-7-12, 46-7-12.1, 46-7-13 through 46-7-15, 46-7-15.1, 46-7-16 through 46-7-39 (Article 1), 46-7-50 through 46-7-79 (Article 2), 46-7-85.1 through 46-7-85.21 (Article 3), and 46-7-90 through 46-7-92 (Article 4), and was based on Ga. L. 1931, p. 199, §§ 3-9,

12-20, 26-30, 32; Code 1933, §§ 68-603—68-614, 68-617—68-619, 68-621—68-623, 68-625, 68-629—68-634, 68-9911; Ga. L. 1937, p. 469, § 1; Ga. L. 1937, p. 730, § 2; Ga. L. 1943, p. 351, § 1; Ga. L. 1950, p. 186, § 1; Ga. L. 1963, p. 376, § 1; Ga. L. 1965, p. 418, § 1; Ga. L. 1973, p. 641, § 1; Ga. L. 1973, p. 643, §§ 3, 4; Ga. L. 1980, p. 475, §§ 1, 2; Ga. L. 1980, p. 618, § 2; Ga. L. 1980, p. 1119, § 2; Ga. L. 1983, p. 462, § 1; Ga. L. 1983, p. 529, § 1; Ga. L. 1983, p. 1474, § 5; Ga. L. 1986, p. 1283, §§ 3, 4, 6, 7; Ga. L. 1987, p. 3, § 46; Ga. L. 1988, p. 1607, § 1; Ga. L. 1994, p. 1238, § 2; Ga. L. 1996, p. 950, §§ 3, 4; Ga. L. 2000, p. 951, § 9-4; Ga. L. 2000, p. 1583, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1378, §§ 9, 10; Ga. L. 2003, p. 426, § 1; Ga. L. 2004, p. 361, § 46; Ga. L. 2004, p. 366, §§ 3-10, 13, 14, 16-21; Ga. L. 2004, p. 631, § 46; Ga. L. 2005, p. 334, §§ 28-2, 28-2.1, 28-3, 28-4, 28-5.1, 28-5.2, 28-6/HB 501; Ga. L. 2007, p. 679, §§ 2-4/HB 389; Ga. L. 2008, p. 450, § 1/SB 384; Ga. L. 2009, p. 629, §§ 3-6, 9/HB 57; Ga. L. 2010, p. 409, § 2/SB 392; Ga. L. 2010, p. 878, § 46/HB 1387; Ga. L. 2010, p. 932, §§ 31, 32/HB 396; Ga. L. 2011, p. 479, §§ 19-24/HB 112; Ga. L. 2011, p. 752, § 46/HB 142. For the Georgia Motor Carrier Act of 2012, see O.C.G.A. Art. 3, Ch. 1, T. 40.

CHAPTER 8

RAILROAD COMPANIES

Article 1

General Provisions

Sec.

Article 4

Powers of Companies Generally

Article 5

Construction, Improvement, and Repair of Rail Lines, Depots, and Roads

Article 6

Operation of Trains Generally

Part 1

Employees Engaged in Operation of Trains Generally

Sec.

Part 2

Signal Whistles and Lights on Trains

Part 3

Operation of Trains at Crossings

Part 4

Injury to Livestock and Other Property

Article 8

Liens Against Companies Generally

Sec.
46-8-250 through 46-8-254 [Repealed].

Article 9

Leases and Conditional Sales of Rolling Stock

46-8-270 through 46-8-272 [Repealed].

Article 13

Acts or Attempts Resulting in Insolvency or Judicial Seizure of a Company

Sec.
46-8-360 through 46-8-365 [Repealed].

Cross references. — Official state transportation history museum, § 50-3-77.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Extrahazardous Nature of Railroad Crossing — Obstruction of View, 18 POF2d 611.

Inadequacy of Warning Device at Railroad Crossing, 37 POF2d 439.

Carrier's Negligence in Boarding or Alighting of Passenger, 38 POF2d 677.

Carrier's Negligent Maintenance of Public Facility, 47 POF2d 577.

Data and Voice Recorders in Airplanes, Motor Vehicles and Trains, 84 POF3d 1.

Am. Jur. Trials. — Railroad Health and Safety: A Litigator's Guide, 71 Am. Jur. Trials 1.

Handling a Grade Crossing Collision for Locomotive Occupants, 74 Am. Jur. Trials 1.

ARTICLE 1

GENERAL PROVISIONS

46-8-1 through 46-8-4.

Reserved. Repealed by Ga. L. 2006, p. 699, § 1/SB 285, effective July 1, 2006.

Editor's notes. — This article was based on Ga. L. 1892, p. 37, § 13; Civil Code 1895, § 2175; 1899, p. 54, §§ 1, 2; Civil Code 1910, §§ 2593, 2598, 2599; Code 1933, §§ 94-314, 94-319, 94-320; Ga. L. 1953, Ex. Sess., p. 213, § 10; Ga. L. 1989, p. 946, § 113.

ARTICLE 3

INCORPORATION AND CONSOLIDATION OF RAILROAD COMPANIES AND REQUIREMENTS AS TO DIRECTORS AND OFFICERS

Part 1

Incorporation, Organization, Subscription of Capital Stock, Selection of Officers and Directors

46-8-40. Grant of corporate powers and privileges to railroad companies by Secretary of State; procedure in case of disqualification of Secretary of State.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 21 Am. Jur. Pleading and Practice Forms, Railroads, § 242.

Part 2

Consolidation, Merger, Surrender of Franchise, and Dissolution of Companies

46-8-71. Dissolution of railroad corporation generally.

Editor's notes. — Code Section 46-8-106, referred to in this section, was repealed by Ga. L. 2006, p. 699, § 2/SB 285, effective July 1, 2006.

ARTICLE 4

POWERS OF COMPANIES GENERALLY

46-8-100. General powers.

A railroad company organized and incorporated as provided in this chapter shall be empowered:

(1) To cause such examinations and surveys to be made for the proposed railroad as shall be necessary for the selection of the most advantageous route, and, by its officers, agents, servants, or employees, to enter upon the land or water of any person for that purpose, provided that the company shall be responsible for all damage done to such property;

(2) To take and hold such voluntary grants of real estate and other property as may be made to it to aid in the construction, maintenance, and accommodation of said road; but the real estate received

by voluntary grant shall be held and used for the purpose of such grant only;

(3) To acquire, purchase, hold, and use all such real estate and other property as may be necessary for the construction and maintenance of said road and of the stations, wharves, docks, terminal facilities, and all other accommodations necessary to accomplish the object of the corporation; and to condemn, lease, or buy any land necessary for its use; provided, however, that to the extent an issue arises over the dimensions of any such acquisition by a railroad corporation or railroad company which occurred prior to 1913, such dimensions shall be determined by reference to the documents evidencing any such transaction and by examining the official map of the railroad filed with the Interstate Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913, Stat. 701, as amended, and such depictions contained on such official railroad map shall be conclusive as to the dimensions of any acquisition as of the date of such railroad map; provided, further, that each railroad corporation and railroad company shall file and record such official map of the railroad with the superior court for the county in which such land depicted on such official railroad map is situated. Any court of this state shall take judicial notice of the information set forth in any such official map properly filed and recorded by such railroad corporation or railroad company;

(4) To lay out its road, not exceeding in width 200 feet, and to construct the same, and, for the purpose of cuttings and embankments and for obtaining gravel and other material, to take as much land as may be necessary for the proper construction, operation, and security of said road; and to cut down any trees that may be in danger of falling on the track or obstructing the right of way, making compensation therefor as provided by law;

(5) To construct its road across, along, or upon or otherwise to use any stream of water, watercourse, street, highway, or canal which the route of its road intersects or touches, provided that no railroad shall be constructed along and upon any street or highway without the written consent of the municipal or county authorities. Whenever the track of any such railroad shall touch, intersect, or cross any road, highway, or street, it may be carried over or under the road, highway, or street, or cross at a grade level or otherwise, as may be found most expedient for the public good;

(6) To cross, intersect, join, or unite its railroad with any other railroad at any point on its route, or upon the ground of any other railroad company, with the necessary turnouts, sidings, switches, and other conveniences necessary for the construction of said road, and to run over any part of any other railroad's right of way as may be

necessary to reach its freight depot in any city through or near which said railroad may run, provided that the crossing of another railroad, either over or under or at grade level or otherwise, shall be at the expense of the company making the crossing, and in such way and manner, and at such time, as not to interfere with the railroad in the operation of its trains or the conduct of its regular business;

(7) To receive and convey persons or property over their railroads by the use of steam, electricity, or any other motive power, and to receive compensation therefor, and to do all things incident to railroad business;

(8) To erect and maintain convenient buildings, wharves, docks, stations, fixtures, and machinery, within or without a city, for the accommodation and use of its passenger and freight business;

(9) To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor, subject to any law of this state upon the subject, or any rule or regulation governing such matters by the commission;

(10) To borrow such sums of money, at such rates of interest and upon such terms, as the company or its board of directors shall deem necessary or expedient, and to execute trust deeds or mortgages, or both, if the occasion requires, on the railroad in process of construction, or after the same has been constructed, for the amounts borrowed or owed by the company. The company may make such provisions in such trust deed or mortgage for transferring, as security for any bonds, debts, or sums of money secured by such trust deeds or mortgages, its railroad track, depots, grounds, rights, privileges, franchises, immunities, machine shops, roundhouses, rolling stock, furniture, tools, implements, and appurtenances used in connection with the railroad, then owned by said company, or which thereafter it may acquire, as it thinks proper; and all such deeds of trust and mortgages shall be recorded as provided by law for the record of mortgages, in each county through which the road runs, provided that all rights to borrow money, issue bonds or other evidences of debt, and execute trust deeds or mortgages to secure the same shall be exercised within the limitations and in the manner which shall be prescribed by law, and no debt, trust deed, mortgage, or other lien shall be made or created except on terms and conditions similar to those prescribed in Code Section 46-8-53 for the increase of capital stock or the issuance of bonds. (Ga. L. 1892, p. 37, § 9; Civil Code 1895, § 2167; Civil Code 1910, § 2585; Code 1933, § 94-301; Ga. L. 1982, p. 3, § 46; Ga. L. 1984, p. 22, § 46; Ga. L. 2008, p. 210, § 7/HB 1283.)

The 2008 amendment, effective July 1, 2008, in paragraph (3), added the two provisos and added the last sentence.

Editor's notes. — Ga. L. 2008, p. 210, § 1, not codified by the General Assembly, provides: "(a) The General Assembly finds that the railroads and their rights of way in Georgia:

"(1) Are essential to the continued viability of this state;

"(2) Are valuable resources which must be preserved and protected;

"(3) Are essential for the economic growth and development of this state;

"(4) Provide a necessary means of transporting raw materials, agricultural products, other finished products, and consumer goods and are also essential for the safe passage of hazardous materials;

"(5) Relieve congestion on the highways and keep dangerous products and materials off our highways;

"(6) Are vital for national defense and national security; and

"(7) Provide the most energy efficient means of transportation through this state, thus minimizing air pollution and fuel consumption.

"(b) The purpose of this Act is to protect the rights of way of railroads from loss by claims of adverse possession or other claims by prescription and to recognize the dimensions of these rights of way as they were identified and defined nearly 100 years ago."

46-8-101 through 46-8-103.

Reserved. Repealed by Ga. L. 2006, p. 699, § 2/SB 285, effective July 1, 2006.

Editor's notes. — These Code sections were based on Orig. Code 1863, § 691; Code 1868, § 753; Code 1873, § 719; Code 1882, § 719; Ga. L. 1892, p. 37, § 13; Civil Code 1895, §§ 1865, 2174, 2233; Civil Code 1910, §§ 2229, 2592, 2686; Code 1933, §§ 94-306, 94-312, 94-313; Ga. L. 1982, p. 3, § 46.

46-8-105 through 46-8-109.

Reserved. Repealed by Ga. L. 2006, p. 699, § 2/SB 285, effective July 1, 2006.

Editor's notes. — These Code sections were based on Ga. L. 1892, p. 37, §§ 9, 14; Ga. L. 1894, p. 65, § 1; Civil Code 1895, §§ 2167, 2168, 2177; Ga. L. 1899, p. 31, § 2; Civil Code 1910, §§ 2585, 2586, 2595, 2672; Code 1933, §§ 94-303 — 94-305, 94-316, 94-328, 94-329, 94-502; Ga. L. 1933, p. 235, §§ 1, 2.

ARTICLE 5

CONSTRUCTION, IMPROVEMENT, AND REPAIR OF RAIL LINES, DEPOTS, AND ROADS

46-8-123. Construction of extensions and branch roads generally.

(a) Any railroad company may extend its railroad from any point named in the petition for charter or may build branch roads from any point on its line of road. Before making any such extensions or building any such branch roads, the company shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the route of such proposed extension or branch and advertise the route in

all of the counties through which such extension or branch road will run, for the time and in the manner provided by Code Section 46-8-41, and shall file a certified copy of such resolution and advertisements in the office of the Secretary of State, which shall be filed and recorded as are original petitions for charters. As a fee for such filing, the company shall pay to the Office of the State Treasurer $25.00 for each extension or branch road.

(b) Within one year after the filing of the resolution with the Secretary of State, the railroad company shall have the right to begin the construction and equipment of such branch or extension. If the railroad company fails to construct as much as 20 miles within two years, or fails to complete the branch or extension if it is to be less than 20 miles in length, the powers and privileges to do so shall cease.

(c) For the purpose of such extension or branch road, the company shall have all the rights and privileges of condemning or acquiring the rights of way that are provided for constructing and building the main line.

(d) All the provisions of this title relating to the issuance of stocks and bonds for the road authorized under the original petition for incorporation shall be applicable to and control the issuance of stocks and bonds for the proposed extensions and branches. (Ga. L. 1892, p. 37, § 10; Civil Code 1895, § 2169; Civil Code 1910, § 2587; Code 1933, § 94-307; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" in the middle of the last sentence of subsection (a).

46-8-125. Change of general direction and route of railroad.

Reserved. Repealed by Ga. L. 2006, p. 699, § 3/SB 285, effective July 1, 2006.

Editor's notes. — This Code section was based on Ga. L. 1892, p. 37, § 12; Civil Code 1895, § 2171; Ga. L. 1903, p. 36, § 1; Civil Code 1910, § 2589; Code 1933, § 94-309; Ga. L. 2004, p. 631, § 46.

46-8-127. Regulation of distance between tracks with the same terminal points.

Reserved. Repealed by Ga. L. 2006, p. 699, § 3/SB 285, effective July 1, 2006.

Editor's notes. — This Code section was based on Ga. L. 1892, p. 37, § 15; Ga. L. 1895, p. 60, § 1; Civil Code 1895, § 2176; Civil Code 1910, § 2594; Code 1933, § 94-315.

46-8-129 through 46-8-132.

Reserved. Repealed by Ga. L. 2006, p. 699, § 3/SB 285, effective July 1, 2006.

Editor's notes. — These Code sections were based on Ga. L. 1889, p. 158, §§ 1-3; Civil Code 1895, §§ 2243-2246; Civil Code 1910, §§ 2699-2702; Code 1933, §§ 94-601 — 94-604.

ARTICLE 6

OPERATION OF TRAINS GENERALLY

PART 1

EMPLOYEES ENGAGED IN OPERATION OF TRAINS GENERALLY

46-8-150 through 46-8-152.

Reserved. Repealed by Ga. L. 2006, p. 699, § 4/SB 285, effective July 1, 2006.

Editor's notes. — This part was based on Ga. L. 1890-91, p. 182, §§ 1-3; Ga. L. 1890-91, p. 185, §§ 1-4; Ga. L. 1890-91, p. 186, §§ 1-3; Civil Code 1895, §§ 2237-2242; Ga. L. 1908, p. 49, §§ 1, 2; Civil Code 1910, §§ 2690-2696; Penal Code 1910, § 525; Code 1933, §§ 18-106, 18-605, 94-901, 94-902, 94-9907, 94-1106.

PART 2

SIGNAL WHISTLES AND LIGHTS ON TRAINS

46-8-170 through 46-8-172.

Reserved. Repealed by Ga. L. 2006, p. 699, § 4/SB 285, effective July 1, 2006.

Editor's notes. — This part was based on Ga. L. 1908, p. 50, §§ 1, 2, 4; Civil Code 1910, §§ 2697, 2698; Penal Code 1910, § 526; Ga. L. 1918, p. 212, § 1; Ga. L. 1924, p. 173, §§ 1, 2; Code 1933, §§ 66-409, 66-9911, 94-505, 94-9901; Ga. L. 1950, p. 112, § 1; Ga. L. 1952, p. 76, §§ 1-3; Ga. L. 1982, p. 3, § 46.

PART 3

OPERATION OF TRAINS AT CROSSINGS

46-8-190 through 46-8-193.

Reserved. Repealed by Ga. L. 2006, p. 699, § 5/SB 285, effective July 1, 2006.

Editor's notes. — These Code sections were based on Ga. L. 1918, p. 212, §§ 2-5; Ga. L. 1931, p. 229, §§ 1, 2; Code 1933, §§ 94-506-94-508, 94-510, 94-9902, 94-9903, 94-9905; Ga. L. 1947, p. 479, § 1.

46-8-198. Erection and placement of signboards to warn of drawbridges, grade crossings, and stations at which there is a switch.

Reserved. Repealed by Ga. L. 2006, p. 699, § 5/SB 285, effective July 1, 2006.

Editor's notes. — This Code section was based on Ga. L. 1913, p. 114, §§ 1, 2; Code 1933, §§ 94-509, 94-9904.

Part 4

Injury to Livestock and Other Property

46-8-210 through 46-8-212.

Reserved. Repealed by Ga. L. 2006, p. 699, § 6/SB 285, effective July 1, 2006.

Editor's notes. — This part was based on Ga. L. 1847, p. 250, § 4; Code 1863, § 2981; Ga. L. 1863-64, p. 65, § 1; Code 1868, §§ 2982, 2983; Code 1873, §§ 3037, 3038; Code 1882, §§ 3037, 3038; Ga. L. 1882-83, p. 146, §§ 1, 2; Civil Code 1895, §§ 2247, 2248, 2261, 2262; Ga. L. 1901, p. 37, § 1; Civil Code 1910, §§ 2703, 2704, 2709, 2710; Code 1933, §§ 94-704, 94-705, 94-709, 94-710; Ga. L. 1982, p. 3, § 46.

ARTICLE 8

LIENS AGAINST COMPANIES GENERALLY

46-8-250 through 46-8-254.

Reserved. Repealed by Ga. L. 2006, p. 699, § 8/SB 285, effective July 1, 2006.

Editor's notes. — This article was based on Ga. L. 1876, p. 122, §§ 1, 2; Code 1882, § 278a; Ga. L. 1893, p. 91, §§ 1, 2; Ga. L. 1894, p. 68, §§ 1, 2; Civil Code 1895, §§ 2329-2333; Civil Code 1910, §§ 2793-2797; Code 1933, §§ 94-801 — 94-805.

ARTICLE 9

LEASES AND CONDITIONAL SALES OF ROLLING STOCK

46-8-270 through 46-8-272.

Reserved. Repealed by Ga. L. 2006, p. 699, § 8/SB 285, effective July 1, 2006.

Editor's notes. — This article was based on Civil Code 1895, §§ 2326-2328; Ga. L. 1889, p. 188, §§ 1-3; Civil Code 1910, §§ 2790-2792; Code 1933, §§ 94-401 — 94-403; Ga. L. 1917, p. 55, § 1.

ARTICLE 10

LIABILITY OF COMPANIES FOR DAMAGES GENERALLY

46-8-290. Liability of railroad companies and their officers, agents, and employees for injuries to individuals and for damage or destruction of property generally.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 12 Am. Jur. Pleading and Practice Forms, Fires, § 2.

46-8-291. Consent and contributory negligence as defenses; comparative negligence as affecting amount of recovery.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 12 Am. Jur. Pleading and Practice Forms, Fires, § 2.

46-8-292. Proof of injury from running of train as prima-facie evidence of lack of reasonable skill and care.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 12 Am. Jur. Pleading and Practice Forms, Fires, § 2.

ARTICLE 13

ACTS OR ATTEMPTS RESULTING IN INSOLVENCY OR JUDICIAL SEIZURE OF A COMPANY

46-8-360 through 46-8-365.

Reserved. Repealed by Ga. L. 2006, p. 699, § 9/SB 285, effective July 1, 2006.

Editor's notes. — This article was based on Ga. L. 1892, p. 111, §§ 2-6; Penal Code 1895, §§ 686-690; Penal Code 1910, §§ 735-739; Code 1933, §§ 94-9910 — 94-9914; Ga. L. 1984, p. 22, § 46.

CHAPTER 8A

RAPID RAIL PASSENGER SERVICE

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Extrahazardous Nature of Railroad Crossing — Obstruction of View, 18 POF2d 611.

Inadequacy of Warning Device at Railroad Crossing, 37 POF2d 439.

Carrier's Negligence in Boarding or Alighting of Passenger, 38 POF2d 677.

Carrier's Negligent Maintenance of Public Facility, 47 POF2d 577.

Data and Voice Recorders in Airplanes, Motor Vehicles and Trains, 84 POF3d 1.

Am. Jur. Trials. — Railroad Health and Safety: A Litigator's Guide, 71 Am. Jur. Trials 1.

Handling a Grade Crossing Collision for Locomotive Occupants, 74 Am. Jur. Trials 1.

CHAPTER 9

TRANSPORTATION OF FREIGHT AND PASSENGERS GENERALLY

Article 1

General Provisions

Article 8

Miscellaneous Offenses

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Status as Common Carrier Rather Than Warehouseman, 12 POF2d 1.

Carrier's Negligence in Boarding or Alighting of Passenger, 38 POF2d 677.

Carrier's Negligent Maintenance of Public Facility, 47 POF2d 577.

Data and Voice Recorders in Airplanes, Motor Vehicles and Trains, 84 POF3d 1.

Am. Jur. Trials. — Railroad Health

and Safety: A Litigator's Guide, 71 Am. Jur. Trials 1.

Handling a Grade Crossing Collision for Locomotive Occupants, 74 Am. Jur. Trials 1.

ARTICLE 1

GENERAL PROVISIONS

46-9-1. Standard of care for carriers and common carriers; presumption of negligence by common carriers arising from loss of goods.

JUDICIAL DECISIONS

ANALYSIS

General Considerations

Cited in Axcan Scandipharm v. Schwan's Home Serv., 299 Ga. App. 49, 681 S.E.2d 631 (2009).

Carrier as Insurer

Ending responsibility as delivering carrier. — Because the injured party was injured when a container that had held hazardous materials exploded, the carrier that had delivered the container hours earlier was not liable as an insurer under O.C.G.A. § 46-9-1, as the injured party was not an owner of the goods. Booth v. Quality Carriers, Inc., 276 Ga. App. 406, 623 S.E.2d 244 (2005).

46-9-5. Limitation of actions by common carriers for recovery of charges.

JUDICIAL DECISIONS

Preemption by federal Interstate Commerce Act. — While the federal Interstate Commerce Act did not preempt a motor carrier's state law actions against a shipping broker for breach of contract and recovery on an open account, the state law statute of limitations for those actions found in O.C.G.A. §§ 46-9-5, 9-3-25 were preempted by the 18-month statute of limitations in 49 U.S.C. § 14705(a); therefore, the carrier's action, filed five days after the 18-month time limit had expired, was untimely. Exel Transp. Servs. v. Sigma Vita, Inc., 288 Ga. App. 527, 654 S.E.2d 665 (2007).

46-9-6. Limitation of actions against carriers for recovery of overcharges; requirements regarding rates, charges, and claims for loss or damage.

Reserved. Repealed by Ga. L. 2012, p. 580, § 17/HB 865, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1933, p. 191, § 2; Code 1933, § 18-602; Ga. L. 1984, p. 22, § 46; Ga. L. 1985, p. 149, § 46; Ga. L.

1996, p. 950, § 5.

ARTICLE 3

TRANSPORTATION AND STORAGE OF FREIGHT AND LIVESTOCK

PART 1

DUTIES AND LIABILITIES OF CARRIERS GENERALLY

46-9-45. Commencement and termination of carrier's responsibility for goods.

JUDICIAL DECISIONS

Ending responsibility as carrier.
Carrier was not liable for the injuries sustained by the injured party when a valve on a container holding hazardous materials exploded after delivery of the container; under O.C.G.A. § 46-9-45, the carrier's responsibility ceased with the delivery of the goods to their destination. Booth v. Quality Carriers, Inc., 276 Ga. App. 406, 623 S.E.2d 244 (2005).

ARTICLE 4

TRANSPORTATION OF PASSENGERS

PART 1

TRANSPORTATION BY CARRIERS GENERALLY

46-9-132. Duty of carriers of passengers to exercise extraordinary diligence.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Passenger carrier bound to exercise extraordinary care.
Metropolitan Atlanta Rapid Transit Authority, a common carrier, in exercising extraordinary care, did not have to utilize the most approved pattern of an escalator in use up to the time of an injured party's accident. MARTA v. Rouse, 279 Ga. 311, 612 S.E.2d 308 (2005).

Darlington v. Finch reinstated. — Intermediate court erred in overruling Darlington Corp. v. Finch, 113 Ga. App. 825, 149 S.E.2d 861 (1966), as a common carrier, in exercising extraordinary care, has to stay informed of safety advances in product design, but is not held to a per se rule that requires it to buy and incorporate those safety advances into previously-purchased, non-defective products; Darlington is reinstated. MARTA v.

Rouse, 279 Ga. 311, 612 S.E.2d 308 (2005).

ARTICLE 8

MISCELLANEOUS OFFENSES

46-9-253. Transportation of gunpowder, dynamite, or other explosives.

Any person who causes more than five pounds of gunpowder, or any amount of dynamite or other dangerous explosive, to be transported upon water, by railroad, or otherwise shall have the word "Gunpowder," "Dynamite," or other name of the explosive marked in large letters upon each package so transported. Gunpowder, dynamite, or other dangerous explosive transported in violation of this Code section are declared contraband and shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9. (Laws 1831; Cobb's 1851 Digest, p. 850; Code 1863, §§ 1412, 1413; Code 1868, §§ 1469, 1470; Code 1873, §§ 1463, 1464; Code 1882, §§ 1463, 1464; Civil Code 1895, §§ 2291, 2292; Civil Code 1910, §§ 2745, 2746; Code 1933, § 18-317; Ga. L. 2015, p. 693, § 3-27/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "in violation of this Code section are declared contraband and shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9" for "in violation of said provision shall be liable to seizure and forfeiture by any officer who may execute a criminal warrant, under warrant for that purpose, issued by any officer who may issue such first-named warrants, one-half of the same to go to the informer, the other half to go to the military fund of the state, after public sale by order of the officer issuing the warrant, or one of like authority". See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

CHAPTER 10

CONSUMERS' UTILITY COUNSEL DIVISION

Sec.
46-10-1 through 46-10-9 [Repealed].

46-10-1 through 46-10-9.

Reserved. Repealed by Ga. L. 2015, p. 1088, § 45/SB 148, effective July 1, 2015.

Editor's notes. — This chapter consisted of Code Sections 46-10-1 through 46-10-8, relating to the Consumers' Utility Counsel Division, and was based on Ga. L. 1981, p. 139, §§ 1-8; Ga. L. 1982, p. 3, § 46; Ga. L. 1983, p. 834, § 1, 2; Ga. L. 1985, p. 494, § 1; Ga. L. 1988, p. 1718, § 1, 2; Ga. L. 1991, p. 1707, § 2; Ga. L. 1992, p. 6, § 46; Ga. L. 1995, p. 167, § 1; Ga. L. 2009, p. 303, §§ 12, 15/HB 117; Ga. L. 2012, p. 700, § 1/HB 769.

CHAPTER 11

TRANSPORTATION OF HAZARDOUS MATERIALS

Sec.
46-11-1 through 46-11-6 [Repealed].

46-11-1 through 46-11-6.

Reserved. Repealed by Ga. L. 2011, p. 479, § 25/HB 112, effective July 1, 2011.

Code Commission notes. — Code Section 46-11-4 was repealed effective July 1, 2011, by operation of Ga. L. 2011, p. 479, § 25. However, Ga. L. 2011, p. 705, § 6-3(110), effective July 1, 2011, purported to amend the former Code section to substitute "Department of Public Health" for "Department of Community Health". For effect of subsequent amendment of a repealed statute, see Lampkin v. Pike, 115 Ga. 827 (1902).

Editor's notes. — This chapter consisted of Code Sections 46-11-1 through 46-11-6, relating to transportation of hazardous materials, and was based on Ga. L. 1979, p. 789, §§ 1-6; Code 1981, §§ 32-6-220—32-6-225; Ga. L. 1982, p. 3, § 32; Ga. L. 1985, p. 149, § 32; Code 1981, §§ 46-11-1—46-11-6 enacted by Ga. L. 1985, p. 469, § 2; Code 1981, §§ 46-11-1—46-11-6 enacted by Ga. L. 1985, p. 1499, § 2; Ga. L. 2000, p. 951, § 10-1; Ga. L. 2005, p. 334, §§ 28-7—28-11/HB 501; Ga. L. 2009, p. 453, § 1-4/HB 228.